



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, वीरवार, 17 सितम्बर, 2009/26 भाद्रपद, 1931

हिमाचल प्रदेश सरकार

वहुउद्देशीय परियोजनाएं एवं विद्युत विभाग

अधिसूचना

(शुद्धि पत्र)

5 मार्च, 2008

संख्या: विद्युत-छ-(5)-14/2008.—इस विभाग की समसंख्यक अधिसूचना दिनांक 4-10-2008 जो कि गांव बनोहल, उप तहसील ददाहू, जिला सिरमौर में भूमि अधिग्रहण करने हेतु जारी की गई है की विवरणी में भूमि खसरा नम्बर "92/56" के रकबा तादादी "21-14" बीघा को "24.17" बीघा पढ़ा जाए।

आदेश द्वारा,
हस्ताक्षरित/—
प्रधान सचिव।

वहुउद्देशीय परियोजनाएं एवं विद्युत विभाग

अधिसूचना

(शुद्धि पत्र)

07 सितम्बर, 2009

संख्या: विद्युत-छ-(5)-22/2008.—इस विभाग की समसंख्यक अधिसूचना दिनांक 4-10-2008 जो कि गांव चलोगा ब्यास, तहसील राजगढ़ जिला सिरमौर में भूमि अधिग्रहण करने हेतु जारी की गई है की विवरणी में भूमि खसरा नम्बर “40/5/4” रकबा तादादी “1.15” बीघा भी पढ़ा जाए।

आदेश द्वारा,
हस्ताक्षरित/—
प्रधान सचिव।

MPP & POWER DEPARTEMENT
NOTIFICATION*Shimla-171002, the 16th September, 2009*

No. MPP-F-(10)15/2006.—The Governor, Himachal Pradesh is pleased to notify the Guidelines for management of Local Area Development Fund (LADF) in respect of Hydro Electric Projects as per Annexure-A.

By order,
Sd/-
Chief Secretary.

 ANNEXURE-A
MPP & POWER DEPARTEMENT
Guidelines for management of Local Area Development Fund (LADF) in respect of Hydro Electric Projects.

I. In accordance with the provisions of Hydro Power Policy, 2006, a provision of 1.5% of the cost of the projects above 5 MW and 1% for projects up to 5 MW is required to be made for Local Area Development activities by the Developers, which is applicable for new as well as ongoing projects. The fund will be administered by a District level committee called Local Area Development Committee (LADC) under the Chairmanship of Deputy Commissioner and comprising of various stakeholders of the Government departments and project affected areas. In order to administer the fund and manage the activities in an objective, transparent and efficient manner, the following standard guidelines are framed.

II. AIMS AND OBJECTIVES:

While developing hydro power projects, there are impacts on environment, existing infrastructure, individual and community resources etc. which needs to be addressed by making appropriate and adequate provisions in the project design and cost. The provisions for mitigating the adverse impacts are provided for in relevant schemes like Environment Management Plan (CMP), Catchment Area Treatment Plan (CAT Plan), restoration of loss of environment by investing funds provided under the project through Compensatory Afforestation and Net Present Value of environment lost, Rehabilitation and Resettlement Plan etc. In addition, a special provision of Local Area Development Fund (LADF) under the State Policy has been made to carry out Local Development Activities so as to ensure that while the projects are developed in the State and National interest and in the process local communities in the project area also benefit by enhanced development by investing resources through project cost. Further allocation of such resources also needs to be based on pre-determined objective parameters so that the people of the affected area are aware about the allocations likely to flow to them and gainful infrastructure and local development activities can be planned well in advance for administering the fund. Mandate of Local Area Development Committee also needs to be broadened so as to ensure convergence of resources and schemes for mitigation measures under EMP, CAT Plan, action plan for NPV Funds, R&R Plan and Local Area Development Fund for integrated development of the affected areas in a participative manner.

III. CONSTITUTION AND SCOPE OF LADF:

(i) The local area development activities during project execution shall be financed by the Project itself and for this purpose the Developer shall make a provision of 1.5% of final cost of the Project. While the project authorities have to contribute minimum of 1.5% of project cost to LADF, they may contribute more than 1.5% if they so desire. The project cost would include interest during construction, R&R, establishment charges and all the expenses that go towards fixing of tariff. For micro hydel projects up to 5 MW, 1% of the project cost will be contributed to this Fund.

(ii) The amount on account of LADF shall be paid by the Developer to the Deputy Commissioner or Member Secretary of LADC in the following manner:—

- (a) 10% within three months of signing of Implementation Agreement.
- (b) Remaining in equal annual installments during construction period of the project.
- (c) The first installment will be paid within three months of grant of Techno Economic Clearance. The amount due every year will be put in LADF account irrespective of the expenditure made or unspent balances.

(iii) The Developer shall keep the Government informed of any revision in the construction cost of the Project from time to time and shall release the installments of fund accordingly.

(iv) The funds made available under LADF shall be spent in project affected area and project affected zone only and shall not be diverted to any other area except on certain project/activities which are of common interest/benefits of project affected population in accordance with delegations to LADC.

IV. INSTITUTIONAL ARRANGEMENT FOR ADMINISTRATION OF FUND:

On the lines provided in the Power Policy there will be a Local Area Development Committee (LADC) headed by Deputy Commissioner and comprising of various stakeholders as per constitution annexed.

V. DEFINITION:**(a) Project Affected Area:**

Project Affected Area means the area where Govt. and Private land is required/acquired either on temporary or on permanent basis, including on lease, for construction of any component of the project, submergence area, infrastructure, project dedicated township, offices, construction facilities, welfare facilities etc. and area where under ground works are taken up. Tunnels and related underground works are generally on either side of the river and hence the area on the opposite bank of the river/stream between the dam site and power house site of such tunnel works will be included in the project affected area. Unit for declaring project affected area would be Panchayat. Townships not directly connected with the particular project like township for design office or head office or common township for several projects may be excluded from this with the approval of LADC, if it is felt that this township will adversely affect flow of LADF to project affected area where actual project components are located in case such township is located away from the main project components.

(b) Project Affected Zone:

Project Affected Zone means the area surrounding such project affected area where impact of the project on the lives of people is considerable even if no direct project activity is taking place in these surrounding areas. Unit for declaring this would be Panchayat. However, such zone will not extend beyond the boundaries of immediate next Panchayat of project affected Panchayat.

(c) Project Affected Area and Project Affected Zone will be declared by Govt. of Himachal Pradesh for projects over 100 MW and by Deputy Commissioner for projects below 100MW.

(d) Project Affected Family:

Means a family whose land or house or other property or source of livelihood has been affected by the development of project.

VI. PARAMETERS FOR ALLOCATION OF FUNDS DISCLOSURE:

Allotment of funds for development works shall be made strictly in accordance with a transparent and objective criteria as under:—

(i) 70% of the total funds in LADF shall be earmarked and allotted to Project Affected Area and will be further divided amongst the Panchayats falling within the Project Affected Area on the basis of a formula by assigning fixed weightage to the following parameters :—

(a) Land area acquired, private as well as Govt./community lands – 20%.

(b) Extent and quantities of underground works like tunnel/edit length, dam and power house etc. causing disturbance in the area – 40%.

- (c) Length of river /stream between reservoir and power house falling in the territory of Panchayat on both banks of river---40%

Actuals of these ratio will be finalized by D.C. in consultation with developer based on factual details, as will be revised from time to time.

(ii) Remaining 30% funds may be used for common schemes benefiting more than one Panchayat within project affected area, schemes for Project Affected Zone and for such works that LADC may feel as essential for common interest of affected people outside the project area or zone within the District like District/Tehsil headquarters, focal points etc.

(iii) After the allotment of project site to the developer by the State Government, survey, investigation, potential studies etc. are carried out by the developer and project components like dam site, power house site, tunnel alignment etc. are finalized and EIA and EMP are prepared and land acquisition plans are proposed by developer. At this stage consultative process with various stakeholders are also initiated. It is at this stage that standard R&R plan and size of Local Area Development Fund should be disclosed because tentative project cost is also known.

VII. PREPARATION OF SHELF OF SCHEMES:

(i) Developer and the Member Secretary will inform the Panchayat falling under project affected area about the tentative ratio/percentage of funds that will be given to each project affected Panchayats in accordance with provision in Para-VI above. In case there is any addition or deletion of area on later date, the ratio may be corrected by Member Secretary.

(ii) The concerned Panchayat would then prepare a shelf of schemes which they want to take up with this Fund in consultation with and by associating the Project Developer. Developer will be invited to the Panchayat meetings to explain the details so that shelf is decided. A comprehensive shelf of projects for the entire amount allocated would be prepared along with a yearly plan to take up works according to the availability of funds. The yearly plan may be again discussed in Gram Sabha/ Gram Panchayat every year and altered if required. All this would however, be done in consultation with and by involving representative of Project Developer. While forming this shelf, they would also consult the project affected families. The shelf will be placed before Gram Sabha and the shelf of schemes as approved by Gram Sabha would then be sent to the Member Secretary of LADC.

(iii) While preparing the shelf, the Panchayat will follow the following priorities:-

(a) New Infrastructural Schemes:—

Drinking water/irrigation/school buildings/health centres/pucca roads/pucca paths, markets, bus stand, solid waste disposal, sanitation, Community Centres, MM Bhawan, Panchayat Bhawan, sanitation waste disposal, Creation of income generating assets for Panchayat, Creation of community places of worship, cremation/burial – First Priority.

(b) Renovation/special repairs/maintenance of existing infrastructure i.e. buildings like schools/health sub centres/community halls/roads/ paths/ water supply and irrigation schemes/ places of worship, Shops/other income generating assets of Panchayats, Panchayat Bhawan , MM Bhawan– Second Priority.

(c) Soil conservation/water shed/land scaping/parks/playgrounds/kacha paths/ flood protection works and retaining walls – 3rd priority.

Not more than 20% funds would be spent on kacha paths.

(iv) The shelves given by the various project affected Panchayats falling under project affected area would then be placed before the LADC in its full meeting. The LADC will approve the schemes which are in accordance with the priorities given above and within the budget for that particular Panchayat out of the 70% allocation. LADC shall not change the Gram Sabha Priorities.

(v) The LADC may sanction schemes out of remaining 30% funds in accordance with priorities given by the Members of LADC and /Panchayats as per provision of Para-VI and VII above.

(vi) No vehicle will be purchased from this Fund.

VIII. EXECUTION AND MONITORING:

(i) The schemes sanctioned as given above may be executed by the project authorities through their own engineering staff, by Gram Panchayat concerned or through any State Government Department. LADC itself may take a decision regarding agency for the execution of sanctioned schemes.

(ii) The schemes under LADA shall be executed/ completed ordinarily within a period of two years.

(iii) Govt. departments executing the works will not levy Departmental Charges if such scheme is mandated to be executed in normal course by Department and LADF should be treated as one of the source of funding. However, if scheme in ordinary course is not required and does not form part of departmental obligation, departmental charges will be 7.5%.

(iv) The funds for sanctioned schemes would be released to the executing agency in installments. For schemes costing less than Rs. 1.00 lac fund will be released in two installments and for more than this amount LADC may fix three or more installments in accordance with the work requirement. Funds shall be spent on works/scheme only and not for cash distribution among people except where individual beneficiary schemes are involved.

(v) The Executing Agency is required to submit utilization certificate, completion certificate and accounts of the funds spent. While government agency executing the scheme would have their own mechanism for assessment for private project, LADC may use Engineering staff of any Govt. department. LADC may also send its own technical officers for assessment or checking, if required.

IX. MANAGEMENT OF FUND AND UTILIZATION OF INTEREST THEREUPON:

(i) The interest earned on the funds deposited in LADF will become part of LADF. Up to 25% of the interest earned or Rs. 2.00 lacs per annum, whichever is less, may be used by LADF to cover cost for organizing LADC meetings, monitoring, offices expenses, audit etc. and additional upto 25% for hiring experts/technical staff to check LADF works or hire services of experts for quality assurance, audit, dispute resolution etc. without any obligation on the Government regarding such hirings.

(ii) The assets constructed under LADF will belong to the institutions for which they are constructed like road, irrigation, school, health institutions etc. or to Panchayat as the case may be.

(iii) The funds of LADF would be kept in an account in Post Office or Nationalized bank/H.P. State Cooperate Bank. The preference shall be given to the State Co-operative Banks provided they offer the best competitive interest rates. A separate bank account shall be opened for each project. The account will be operated by Member Secretary and deposits will be managed efficiently to secure best interest on Fund including by keeping in fixed deposit to earn maximum interest. The LADF would be subject to Audit as fixed by Department of Power, inspection and directions of Power Department from time to time.

X. LADF FOR MICRO HYDEL PROJECTS UP TO 5 MW.

(i) For Micro Hydel Projects up to 5 MW capacity, a provision of Rs. 1% of the final cost will be made by the Developer in the project for contribution towards LADF. Since the amount involved on this account and also the project affected area in case of Micro Hydel Projects is much smaller, instead of District Level Committee, there will be a Sub Divisional Level Committee headed by concerned SDM and comprising of the representative of Developer, Block Development Officer concerned and representative of the project affected area i.e. Pradhans of the concerned Gram Panchayats and such officers at Sub Divisional level as required to be co-opted by SDM.

(ii) If the project is located in the territorial area of only one Panchayat, entire amount of LADF will be released directly in instalments as per physical progress to the concerned Panchayat, for which Shelf of Schemes for development will be jointly prepared and approved by local Panchayat and the Developer. In case there are more than one village in such Gram Panchayat, priority will be given to the schemes for the village where the main component of the Hydel project is being set up.

(iii) In case, there are more than one Panchayat, the criteria for allocation of funds and approval of scheme will be remain the same as that for projects above 5 MW.

(iv) District Level Committee can monitor or issue directions to the Sub Division Level Committee with respect to all functions that are assigned to District Level Committee for local area development.

(v) For small HEPs upto 5 MW the Superintendent of SDM office will be the Member Secretary for the purpose of serving the committee.

श्रम विभाग

अधिसूचनाएं

शिमला-171001 14 जनवरी, 2009

संख्या 11-23/84(Lab) I.D/2008-Mandi.—अधोहस्ताक्षरी को यह प्रतीत होता है कि Shri Lekh Raj S/O Shri Amar Singh, Village Jadhan, P.O. Sajao Piplu, Tehsil Sarkaghat, District Mandi, H.P. V/S The Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. के मध्य नीचे दिए गए विषय पर औद्योगिक विवाद है ।

औद्योगिक विवाद अधिनियम, 1947 की धारा 12(4) के अधीन समझौता अधिकारी द्वारा प्रस्तुत की गई रिपोर्ट के अनुसार समझौता अधिकारी ने उक्त विवाद को सुलझाने का भरसक प्रयत्न किया। परन्तु समझौता न हो सका। इस रिपोर्ट पर पूर्ण गौर करने के उपरान्त व उक्त अधिनियम की धारा-12 की उपधारा-5 के

अधीन विचार करने के उपरान्त अधोहस्ताक्षरी ने निर्णय लिया है कि मामला श्रम न्यायालय/औद्योगिक अधिकरण को अधिनिर्णय के लिए भेजने योग्य है।

अतः हिमाचल प्रदेश सरकार द्वारा जारी अधिसूचना संख्या: 19-8/89-श्रम (लूज) दिनांक 7 सितम्बर 1992 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधोहस्ताक्षरी औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उप धारा (1) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए एतद द्वारा इस मामले को उक्त अधिनियम की धारा-7 के अधीन गठित श्रम न्यायालय औद्योगिक अधिकरण हिमाचल प्रदेश को नीचे व्याख्या किए गए विषय पर अधिनिर्णय देने के लिए भेजा जाता है :—

“Whether retrenchment of services of Shri Lekh Raj S/O Shri Amar Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

शिमला-171001, 28 जनवरी, 2009

संख्या 11-23/84(Lab) I.D/2008-Mandi.—अधोहस्ताक्षरी को यह प्रतीत होता है कि Sh. Malkeet Khan S/O Sh. Bhagat, Village-Baral, PO- Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P. V/S The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. के मध्य नीचे दिए गए विषय पर औद्योगिक विवाद है।

औद्योगिक विवाद अधिनियम, 1947 की धारा 12(4) के अधीन समझौता अधिकारी द्वारा प्रस्तुत की गई रिपोर्ट के अनुसार समझौता अधिकारी ने उक्त विवाद को सुलझाने का भरसक प्रयत्न किया। परन्तु समझौता न हो सका। इस रिपोर्ट पर पूर्ण गौर करने के उपरान्त व उक्त अधिनियम की धारा-12 की उपधारा-5 के अधीन विचार करने के उपरान्त अधोहस्ताक्षरी ने निर्णय लिया है कि मामला श्रम न्यायालय/औद्योगिक अधिकरण को अधिनिर्णय के लिए भेजने योग्य है।

अतः हिमाचल प्रदेश सरकार द्वारा जारी अधिसूचना संख्या: 19-8/89-श्रम (लूज) दिनांक 7 सितम्बर 1992 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधोहस्ताक्षरी औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उप धारा (1) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए एतद द्वारा इस मामले को उक्त अधिनियम की धारा-7 के अधीन गठित श्रम न्यायालय औद्योगिक अधिकरण हिमाचल प्रदेश को नीचे व्याख्या किए गए विषय पर अधिनिर्णय देने के लिए भेजा जाता है :—

“Whether retrenchment of services of Sh. Malkeet Khan S/O Sh. Bhagat, by the Executive Engineer, HPPWD Division, Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005, without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex- Worker is entitled to from the above employer?”

शिमला-171001, 1 जनवरी, 2009

संख्या 11-23/84(Lab) I.D/2008-Mandi.—अधोहस्ताक्षरी को यह प्रतीत होता है कि Smt. Malori Devi W/O Sh. Chamaru Ram, Village- Ban, Post-Office Chimanu, Tehsil Sarkaghat, Distt. Mandi, H.P. V/S The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. के मध्य नीचे दिए गए विषय पर औद्योगिक विवाद है।

औद्योगिक विवाद अधिनियम, 1947 की धारा 12(4) के अधीन समझौता अधिकारी द्वारा प्रस्तुत की गई रिपोर्ट के अनुसार समझौता अधिकारी ने उक्त विवाद को सुलझाने का भरसक प्रयत्न किया। परन्तु समझौता न हो सका। इस रिपोर्ट पर पूर्ण गौर करने के उपरान्त व उक्त अधिनियम की धारा-12 की उपधारा-5 के अधीन विचार करने के उपरान्त अधोहस्ताक्षरी ने निर्णय लिया है कि मामला श्रम न्यायालय/औद्योगिक अधिकरण को अधिनिर्णय के लिए भेजने योग्य है।

अतः हिमाचल प्रदेश सरकार द्वारा जारी अधिसूचना संख्या: 19-8/89-श्रम (लूज) दिनांक 7 सितम्बर 1992 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधोहस्ताक्षरी औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उप धारा (1) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए एतद द्वारा इस मामले को उक्त अधिनियम की धारा-7 के अधीन गठित श्रम न्यायालय औद्योगिक अधिकरण हिमाचल प्रदेश को नीचे व्याख्या किए गए विषय पर अधिनिर्णय देने के लिए भेजा जाता है :—

“Whether retrenchment of services of Smt. Malori Devi W/O Sh. Chamaru Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex Worker is entitled to from the above Employer?”

शिमला-171001, 14 जनवरी, 2009

संख्या 11-23/84(Lab) I.D/2008-Mandi.—अधोहस्ताक्षरी को यह प्रतीत होता है कि Sh. Manohar Lal S/o Sh. Anoop Singh, Village Barnod, PO Golwan, Tehsil Ladbhrol, Distt. Mandi (H.P.) V/S The Sr. Executive Engineer, HPSEB Division Joginder Nagar, Distt. Mandi, H.P. के मध्य नीचे दिए गए विषय पर औद्योगिक विवाद है।

औद्योगिक विवाद अधिनियम, 1947 की धारा 12(4) के अधीन समझौता अधिकारी द्वारा प्रस्तुत की गई रिपोर्ट के अनुसार समझौता अधिकारी ने उक्त विवाद को सुलझाने का भरसक प्रयत्न किया। परन्तु समझौता न हो सका। इस रिपोर्ट पर पूर्ण गौर करने के उपरान्त व उक्त अधिनियम की धारा-12 की उपधारा-5 के अधीन विचार करने के उपरान्त अधोहस्ताक्षरी ने निर्णय लिया है कि मामला श्रम न्यायालय/ औद्योगिक अधिकरण को अधिनिर्णय के लिए भेजने योग्य है।

अतः हिमाचल प्रदेश सरकार द्वारा जारी अधिसूचना संख्या :19-8/89-श्रम (लूज) दिनांक 7 सितम्बर 1992 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधोहस्ताक्षरी औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उप धारा (1) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए एतद द्वारा इस मामले को उक्त अधिनियम की धारा-7 के अधीन गठित श्रम न्यायालय औद्योगिक अधिकरण हिमाचल प्रदेश को नीचे व्याख्या किए गए विषय पर अधिनिर्णय देने के लिए भेजा जाता है :—

“Whether termination of the services of Sh. Manohar Lal S/O Sh. Anoop Singh by the Sr. Executive Engineer, HPSEB Division Joginder Nagar, Distt. Mandi, H.P. w.e.f. 21.10.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worked is entitled from the above employer?”

शिमला-171001, 27 जनवरी, 2009

संख्या 11-23/84(Lab) I.D/2008-Mandi.—अधोहस्ताक्षरी को यह प्रतीत होता है कि Shri Megh Singh S/O Shri Bhagat Ram, Village Lakhrehad, P.O. Kujavahal, Tehsil Sarkaghat, District Mandi, H.P. V/S The Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. के मध्य नीचे दिए गए विषय पर औद्योगिक विवाद है।

औद्योगिक विवाद अधिनियम, 1947 की धारा 12(4) के अधीन समझौता अधिकारी द्वारा प्रस्तुत की गई रिपोर्ट के अनुसार समझौता अधिकारी ने उक्त विवाद को सुलझाने का भरसक प्रयत्न किया। परन्तु समझौता न हो सका। इस रिपोर्ट पर पूर्ण गौर करने के उपरान्त व उक्त अधिनियम की धारा-12 की उपधारा-5 के अधीन विचार करने के उपरान्त अधोहस्ताक्षरी ने निर्णय लिया है कि मामला श्रम न्यायालय/औद्योगिक अधिकरण को अधिनिर्णय के लिए भेजने योग्य है।

अतः हिमाचल प्रदेश सरकार द्वारा जारी अधिसूचना संख्या: 19-8/89-श्रम (लूज) दिनांक 7 सितम्बर 1992 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधोहस्ताक्षरी औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उप धारा (1) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए एतद द्वारा इस मामले को उक्त अधिनियम की धारा-7 के अधीन गठित श्रम न्यायालय औद्योगिक अधिकरण हिमाचल प्रदेश को नीचे व्याख्या किए गए विषय पर अधिनिर्णय देने के लिए भेजा जाता है :—

“Whether retrenchment of services of Shri Megh Singh S/O Shri Bhagat Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex Worker is entitled to from the above Employer?”

शिमला-171001, 27 जनवरी, 2009

संख्या 11-23/84(Lab)I.D/2008-Mandi.—अधोहस्ताक्षरी को यह प्रतीत होता है कि Shri Mohammad Khan S/O Shri Mehar Deen, Village Bhadyar, P.O. Brang, Tehsil Sarkaghat, District Mandi, H.P. V/S The Executive Engineer, HPPWD Division Dharampur, District Mandi, H.P. के मध्य नीचे दिए गए विषय पर औद्योगिक विवाद है।

औद्योगिक विवाद अधिनियम, 1947 की धारा 12(4) के अधीन समझौता अधिकारी द्वारा प्रस्तुत की गई रिपोर्ट के अनुसार समझौता अधिकारी ने उक्त विवाद को सुलझाने का भरसक प्रयत्न किया। परन्तु समझौता न हो सका। इस रिपोर्ट पर पूर्ण गौर करने के उपरान्त व उक्त अधिनियम की धारा-12 की उपधारा-5 के अधीन विचार करने के उपरान्त अधोहस्ताक्षरी ने निर्णय लिया है कि मामला श्रम न्यायालय/औद्योगिक अधिकरण को अधिनिर्णय के लिए भेजने योग्य है।

अतः हिमाचल प्रदेश सरकार द्वारा जारी अधिसूचना संख्या :19-8/89-श्रम (लूज) दिनांक 7 सितम्बर 1992 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधोहस्ताक्षरी औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उप धारा (1) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए एतद द्वारा इस मामले को उक्त अधिनियम की धारा-7 के अधीन गठित श्रम न्यायालय औद्योगिक अधिकरण हिमाचल प्रदेश को नीचे व्याख्या किए गए विषय पर अधिनिर्णय देने के लिए भेजा जाता है :—

“Whether retrenchment of services of Shri Mohammad Khan S/O Shri Mehar Deen by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 08-07-2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

शिमला-171001, 14 जनवरी, 2009

संख्या 11-23/84(Lab) I.D/2008-Mandi.—अधोहस्ताक्षरी को यह प्रतीत होता है कि Sh. Nanku Ram S/O Sh. Chamaru Ram, Village-Hawani, PO- Ropadi, Tehsil Sarkaghat, Distt. Mandi, H.P. V/S The Executive Engineer, HPPWD Division Dharampur, Distt. Mandi, H.P. के मध्य नीचे दिए गए विषय पर औद्योगिक विवाद है।

औद्योगिक विवाद अधिनियम, 1947 की धारा 12(4) के अधीन समझौता अधिकारी द्वारा प्रस्तुत की गई रिपोर्ट के अनुसार समझौता अधिकारी ने उक्त विवाद को सुलझाने का भरसक प्रयत्न किया। परन्तु समझौता न हो सका। इस रिपोर्ट पर पूर्ण गौर करने के उपरान्त व उक्त अधिनियम की धारा-12 की उपधारा-5 के अधीन विचार करने के उपरान्त अधोहस्ताक्षरी ने निर्णय लिया है कि मामला श्रम न्यायालय/औद्योगिक अधिकरण को अधिनिर्णय के लिए भेजने योग्य है।

अतः हिमाचल प्रदेश सरकार द्वारा जारी अधिसूचना संख्या :19-8/89-श्रम (लूज) दिनांक 7 सितम्बर 1992 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधोहस्ताक्षरी औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 10 की उप धारा (1) के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए एतद द्वारा इस मामले को उक्त अधिनियम की धारा-7 के अधीन गठित श्रम न्यायालय औद्योगिक अधिकरण हिमाचल प्रदेश को नीचे व्याख्या किए गए विषय पर अधिनिर्णय देने के लिए भेजा जाता है :-

“Whether retrenchment of services of Sh. Nanku Ram S/O Sh. Chamaru Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”

By order,
Sd/-

Labour Commissioner.

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, 1st September, 2009

No. Shram (A) 7-1/2005 (Award).—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of the following awards announced by the Presiding Officer, Labour Court, Shimla in Rajpatra, Himachal Pradesh :—

Sl. No.	Case No.	Title of the case	Date of Award
1.	292/2002	S/Shri Rajinder Singh Vs. XEN, HPSEB, Theog, Shimla	22-06-2009
2.	39/2003	Ram Rattan Vs. XEN, HPSEB, Division, Parwanoo, Solan	20-06-2009
3.	140/2006	Rakesh Bhardwaj Vs. XEN, HPPWD, Division, No. 1, Shimla	30-06-2009
4.	15/2004	Balbir Singh Vs. XEN, HPPWD, Division Kumarsain, Shimla.	20-06-2009
5.	98/2005	Vijender Singh Vs. The Regional Manager HRTC Solan.	20-06-2009
6.	30/2003	Swarika Mishra Vs. M. D. M/s Deepak Spinners Ltd., Baddi, Solan	16-06-2009
7.	64/2005	Prem Raj Vs. M. D., HPTDC, Shimla & Ors.	22-06-2009
8.	46/2008	Gurmeet Singh & Ors. Vs. G. M. M/s Stove Kraft India, Ltd., Solan	11-06-2009
9.	290/2003	Smt. Savita Singh Vs. M/s, Deepak Spinner Ltd., Baddi, Solan	06-06-2009
10.	117/2006	Hardeep Singh Vs. M/s Pamwi Tissues Ltd., Barotiwala, Solan	2-06-2009
11.	135/2006	Pardeep Kumar Vs. R. M. HRTC, Nahan, Sirmaur & Ors.	15-06-2009

12.	136/2006	Purshotam Chand Vs. R. M. HRTC, Nahan, Sirmaur & Ors.	15-06-2009
13.	232/2003	Chandan Thakur Vs. The Assistant Commissioner-cum-BDO, Jubbal, Shimla.	22-06-2009
14.	18/2007	Nasib Singh Vs. XEN, HPPWD, Medical College, Shimla-3	30-06-2009
15.	92/2005	Lachi Ram Vs. . XEN, HPPWD, Division, Arki, Solan	16-06-2009
16.	366/2002	Ajay Kumar Awasthi Vs. Anil Sikand M/S Skand & Company, Solan.	22-06-2009
17.	173/2000	Kandu Ram Vs. Secretary, HPSEB & Ors.	10-06-2009
18.	41/2002	Amar Khadi Udyog Vs. President, Amar Khadi Udyog & Ors.	12-06-2009
19.	119/2006	Rakesh Negi Vs. Project Officer, Hem Builders, Kangra, H. P.	15-06-2009
20.	120/2006	Dinesh Kumar Gupta Vs. Hem Builders, Tapri	15-06-2009
21.	144/2007	Workers Unions Vs The Factory Manager, M/s Jasch Packagings India, Paonta Sahib, Sirmaur.	20-06-2009
22.	44/2008	Rajinder Kumar Vs. The Factory Manager, M/S Jasch Packagings India, Paonta Sahib, Sirmaur.	03-06-2009
23.	186/2002	Madhu Bala Vs. The Director of Horticulture, Shimla-2 & Ors.	02-06-2009
24.	152/2007	Ravi Dutt Vs. M/s Indo Farm Tractors & Motors Ltd., Baddi, Solan	12-06-2009
25.	274/2002	Trilok Singh Vs. M/s Jyco India Ltd., Solan	02-06-2009
26.	276/2002	Satish Kumar Vs. M/s Jyco India Ltd., Solan	02-06-2009
27.	273/2002	Sanjeev Kohli Vs. M/s Jyco India Ltd., Solan	02-06-2009
28.	277/2008	Sanjeevn Kumar Vs. M/S Jyco India Ltd., Solan	02-06-2009
29.	41/2007	Sanjay Kumar Vs. XEN, HPPWD, Medical College, Division, Shimla-3.	30-06-2009
30.	168/2006	Ravi Kumar Vs. XEN, HPPWD, Medical College, Division, Shimla-3.	30-06-2009
31.	167/2006	Sushil Kumar Vs. XEN, HPPWD, Medical College, Division, Shimla-3.	30-06-2009
32.	6/2007	Baldev Singh Vs. XEN, HPPWD, Medical College, Division, Shimla-3.	30-06-2009
33.	137/2007	Kishan Singh & Others Vs. XEN (Mech.) HPPWD & IPH Workshop, (Nahan Foundry), Nahan.	26-06-2009

By order,
Sd/-
ACS (Lab. & Emp.).

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 292 of 2002
Instituted on 19-9-2002
Decided on 22-6-2009

Rajinder Singh S/o Shri Anant Ram R/o Village Kayar, P.O. Kuthar, Tehsil Theog, District Shimla, HP.
...Petitioner.

Vs.

The Executive Engineer, HPSEB Division, Theog, District Shimla, HP. ...Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Gulzar Rathore, Ld. Csl.
For respondent : Shri H. S. Upadhyay, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of the services of Shri Rajinder Singh s/o late Shri Anant Ram w.e.f. 25-5-2000 by the Executive Engineer, HPSEB Division Theog, District Shimla, HP on completion of emergent work and without complying with the provision of the section 25-F of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits including compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was initially appointed as beldar on daily wages basis on June, 1984 to July, 1987 by the respondent, who worked continuously with the respondent and in July, 1987, the services of the petitioner were terminated by the respondent without assigning any reason, who was reengaged in Jan. 1997 and worked till October, 1998 and then the services of the petitioner terminated without any reason, who was again engaged on 8-5-2000 and worked till 25-5-2000 and that on 26-5-2000, the services of the petitioner had been terminated in gross violation of the well settled principle of law despite the fact that the respondent has continued the job of similar situated persons and even his juniors S/Shri Atma Ram, Kapur Singh, Bhoop Singh and Padam Singh are still working with the respondent and that the petitioner made several requests time and again for his reengagement but all in vain and that the services of the petitioner had been terminated without following the proper procedure of law as well as provisions of Industrial Disputes Act, 1947 and that the petitioner had worked with the respondent with full sincerity, honestly, devotion and zeal, who was orally terminated without complying the provisions of sections 25B, 25F, 25G, 25H of the Industrial disputes Act, 1947 and Rule 14(1&2) of the Standing Orders Act, 1946 and that the petitioner was never charge sheeted by the respondent before his termination and that the respondent has failed to tender retrenchment compensation to the petitioner at the time of his termination and that the respondent has engaged many fresh hands into the employment and never offered the employment to the petitioner and that the respondent is required to maintain the seniority of the workmen and offer employment on the basis of seniority but the respondent has failed to discharge their duties and as such prayed for reinstatement with all consequential benefits of back wages, continuity of service, regularization and promotion, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and estoppel. On merits, it is contended that the petitioner was initially engaged as beldar on daily wages basis w.e.f. August, 1984, who worked till March, 1985. It is denied that the appointment of the petitioner was from June, 1984. It is also contended that the petitioner was engaged for specific work, who worked with the respondent on seasonal work as and when the work was available, who worked for short period in 1987 and then abandoned the work of his own and did not approach the respondent till 1997, who was again engaged on seasonal work, who worked for 51 days in 1997 and 146 days in 1998 and then the petitioner left the job of his own, who was again engaged for the work of carriage of store materials and digging for a period of 18 days w.e.f. 8-5-2000 to 25-5-2000 and that the services of the petitioner were never terminated by the respondent, who was appointed for specific work and for specific period, hence the petitioner is not entitled to any relief and S/Shri Atma Ram, Kapoor Singh, Bhoop Singh are not similar to the petitioner, who were appointed by the screening committee and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 10-1-2006 on the pleadings of the parties.

1. Whether the services of the petitioner has been illegally terminated by the respondent without complying the provisions of section 25F of the I.D. Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? ...OPP.
3. Whether the petition in the present form is not maintainable? ...OPR.
4. Whether the petitioner is estopped to file the present petition due to his own acts and deeds? ...OPR.
5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Issue No. 4	No.
Relief.	Reference answered In negative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar in 1984 at Kuthar and worked till July, 1987, who was disengaged by the department as there was no muster roll, who was called by J.E. in 1987 and he had not given anything in writing, who had worked from Jan. 1997 to October, 1998 and then he was removed by J.E. and he was again called on 8-5-2000 and worked till 25-5-2000 and then he was again removed and the persons S/Shri Atma Ram, Bhoop Singh and Kapoor Singh who were working with him are still working in the department. No notice nor compensation was paid to him at the time of his removal, who was removed intentionally by the J.E and the work is still available with the respondent department and he worked continuously from 1984 to 1987.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Ajay Kumar, who has stated that he is authorized to make the statement vide Ex. RA. The petitioner was engaged as daily wages beldar w.e.f. August, 1984 to March, 1985 with breaks, who was engaged from time to time and thereafter for specific period upto 1987, who had not completed 240 working days in a calendar year except in the year 1985 and proved the mandays chart Ex. RB and the petitioner was reengaged in 1997 for specific period who worked in 1998 and 2000 and as such the petitioner is not entitled for reinstatement whose case does not fall under section 25F of the Industrial Disputes Act, 1947.

10. The case of the petitioner is that he being the daily wages beldar having been completed 240 working days in each calendar year and also in twelve calendar months preceding his termination was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his removal and even juniors to him are still continuing with the respondent and as such he is also entitled for reinstatement with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged against specific work and for specific period whose services automatically came to an end after the completion of the work, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, no doubt, the petitioner was engaged by the respondent as daily wages beldar w.e.f. 8/84 to 6/2000 as is evident from mandays chart Ex. RB placed on record, who had not worked with the respondent continuously. The petitioner has tried to establish on record that he had put in more than sixteen years of continuous service with the respondent but there is nothing on record which could show that the petitioner had worked with the respondent for more than 240 days in each calendar year and also in twelve calendar months preceding his termination. Since the petitioner has failed to prove on record that he had put in 240 working days in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25-F of the Act. Moreover, it is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days in twelve calendar months preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

14. It is also the case of the petitioner that the respondent has violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB as no ten days notice was given to him before his termination. It is abundantly clear that no notice for ten days was required to be served upon the petitioner before the termination of the petitioner as it was held by our own High Court that no notice was required to be given to the petitioner by HPSEB even if the employment is below one year, as it was held in Executive Engineer Joginder Nagar & Sanju S/O Sh. Gantu Ram, Vill Dalana,

P.O. Ballhjoli, Tehsil. Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-Cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005 in which it was held that :—

“The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.”

And as such, the petitioner is not entitled to any service benefits as he has failed to prove that he had worked for 240 days in twelve calendar months preceding his termination. Thus, having regard to the entire evidence on record, it can safely be concluded that the petitioner has not completed 240 working days in twelve calendar months preceding his termination nor his juniors are proved to be continuing in service after his removal and obviously, therefore, it can safely be concluded that the services of petitioner has not been terminated wrongly and illegally by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly issue no.1 is decided in favour of respondent and against the petitioner.

Issue No. 2 :

15. Since I have held under issue no. 1 above, the services of petitioner has not been terminated wrongly and illegally by the respondent under the provisions of Industrial Disputes Act, 1947 as well as under the provisions of rule 14 (ii) of Standing Order of HPSEB, hence the petitioner is not entitled to any claim of service benefits, hence issue no.2 is decided accordingly.

Issue No. 3 :

16. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue No. 3 is decided in favour of the petitioner and against the respondent.

Issue No.4 :

17. In support of this issue, no evidence was led by the respondent that as to how the petitioner is estopped from filing the petition by his own acts and deeds. In view of no such evidence on record, it can safely be concluded that the petitioner is not estopped from filing this petition by his own acts and deeds. Accordingly, issue no.4 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 22nd Day of June, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA

Ref No. 39 of 2003
Instituted on 4-2-2003
Decided on 20-6-2009

Ram Rattan S/o Shri Ami Chand R/o Village Kondi, P.O Thana, District Solan, HP.

...Petitioner.

Vs.

The Executive Engineer, HPSEB Division Parwanoo, District, Solan, HP.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Sh. Ramashray Prasad, Ld. AR.

For respondent : Ms. Shilpa Sood, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :—

“Whether the termination of the services of Shri Ram Rattan S/o Shri Ami Chand daily wages beldar by the Executive Engineer, HPSEB, Division Parwanoo, District Solan, HP w.e.f. 1-4-2000 without complying with the provisions of Industrial disputes Act, 1947 is proper and justified? If not, what relief, the aggrieved workman is entitled to?”

2. The petitioner has filed two statement of claim asserting therein that he was engaged as beldar in the Electric Section Baddi in the year 1982 and that the petitioner was working continuously with the respondent to the satisfaction of his superiors till 1-1-2000 and then his services were orally terminated by the respondent without any notice as required under the law, who had completed 240 days in the last proceeding twelve months and that the petitioner approached the respondent for reengagement but all in vain and that the termination of the petitioner is in violation of section 25F, 25N, 25G and 25H of the Industrial Disputes Act, 1947 as no notice nor compensation was paid to him and that the termination of the petitioner is in violation of 14B (2) of the Standing Orders formulated by the respondent itself and that no opportunity of being heard was afforded to the petitioner by the respondent which is in violation of the principles of natural justice and as such prayed for reinstatement along with all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petition discloses no enforceable action in favour of the petitioner and against the respondent and that no legal right of the petitioner have been violated by the respondent, barred by delay and laches and also time barred. On merits, it is contended that the petitioner himself abstained the job without intimation to his superiors, who never approached for his reengagement after 25-4-1999. The petitioner was engaged as beldar on daily wages basis w.e.f. 26-9-1982, who worked till 25-4-1999 and left the job of his own, who had completed 240 days during the year 1986 and 1987, who left the job of his own, hence no notice is required to be served upon the petitioner and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner contervorted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 1-5-2006 on the pleadings of the parties.

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying with the Industrial Disputes Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? ...OPP.
3. Whether the petition is barred by limitation? ...OPR.
4. Whether the petition in the present form is not maintainable? ...OPR.
5. Relief.
6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Issue No. 4	No.
Relief.	Reference answered In negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged in 1982 at Baddi, who also worked at Nalagarh, Barotiwala and Manpura. He was working at Baddi at the time of his

removal, who was removed in 2000 as there was no muster roll, who was engaged for erection of electricity pole whose presence was marked by the department on the muster roll and the department used to send him out side the division for the erection of the electric pole and S/Shri Goverdhan, Diwan, Sohan Singh are still working. No notice nor compensation was given to him at the time of his removal and the department was giving him breaks after three months, who worked for more than 240 days in each calendar year.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. J.S. Rana, who has stated that the petitioner was engaged as daily wages beldar on daily wages on 26-9-1982 and worked till 25-4-1999 and then the petitioner left the job of his own, who was never terminated by the respondent, who had worked for nine days in 1999 preceding his abandonment and proved the mandays chart Ex. RA.

10. The case of the petitioner is that he being the daily wages beldar, who had completed 240 working days in each calendar year and also twelve calendar months preceding his termination, who was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his removal and as such he is entitled for reinstatement with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged as daily wages labour for seasonal work and for specified period, who was engaged according to need of work and funds, who had not completed 240 working days in any calendar year preceding his termination, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent as daily wages beldar, who worked w.e.f. 26-9-1982 to 25-4-1999 as is evident from the mandays chart Ex. RA placed on record. The petitioner has failed to prove that he had put in more than 240 working days in twelve calendar months preceding his termination. On the other hand, the respondent has proved on record that the petitioner was engaged for specific period and for specified period as the petitioner has himself admitted in his cross examination that the work of erection of electrical poles has been completed and as such it is clear that the engagement of the petitioner was purely on the basis of need of work and after the completion of specific work, the services of the petitioner stood automatically dispensed with. Moreover, it is well settled in **(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :—**

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

14. Similarly **in 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. In which it was held that:—**

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

15. Apart from it, it was further held incase titled as **Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC.** and incase titled as **Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC.** In which it was held that:—

“ material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

16. Now, turning to the other aspect of the case, the petitioner tried to establish on record that his juniors are still continuing with the respondent department but he did not prove on record that on which date they joined the department and in fact they are juniors to the petitioner. On the other hand, the respondent has proved on record that the petitioner was engaged as casual labourer and the petitioner was called when the work was available with the respondent and further the petitioner was engaged for specific work and for specific time as per the need of the work and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to him for specific period and for specific work and therefore, the case of petitioner cannot be accepted for his reinstatement

especially when the petitioner has put in nine days in the year 1999, did not even work for a single day in the year 1989 and worked for 27 days in 1988 as is evident from the mandays chart of the petitioner Ex. RA and further no junior to the petitioner is working with the respondent is proved on record.

17. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the services of the petitioner has not been illegally terminated by the respondent without any notice or compensation which is legal and justified and rather the petitioner was engaged as casual labourer for seasonal work and for specific period, who has not completed 240 working days in twelve calendar months preceding his termination. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

Issue No. 2.

18. Since, I have held under issue no.1 above, that the services of the petitioner has been legally dispensed with by the respondent without notice or compensation, hence the petitioner is not entitled to any service benefits. Accordingly, issue no.2 is answered in negative.

Issue No. 3:

19. In support of this issue, no evidence was led by the respondents. However I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another in which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947 and as such this issue is decided in negative.

Issue No. 4:

20. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.4 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to above discussion and findings on issues no.1 to 4, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 20th June, 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 140 of 2006
Instituted on 18-11-2006
Decided on 30-6-2009

Rakesh Bhardwaj, S/o Shri F.C Bhardwaj, R/o Hari Cottage, Lower Kaithu, Shimla, HP.

...Petitioner.

Vs.

The Executive Engineer, HPPWD Division No.1, Shimla-3, HP.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J. C. Bhardwaj, Ld. AR.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :—

“Whether the termination of services of Shri Rakesh Bhardwaj S/o Shri F.C Bhardwaj workman by the Executive Engineer, HPPWD, Division no.1, Shimla-3, HP w.e.f. 1.6.2002 without complying the provisions of Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was engaged in the employment of respondent department as daily wages beldar at first instance during August, 1999, who continued as such till 1-6-2002 with arbitrary and fictional breaks and then the services of the petitioner have been terminated without any cogent reason and justification and without compliance of Industrial disputes Act, 1947, who had worked for more than 240 days in twelve calendar months preceding his termination and that the services of the petitioner have been terminated orally while adopting the method of unfair labour practice as no opportunity to defend himself was given to the petitioner as no notice nor compensation was paid to the petitioner at the time of his removal and that the respondent has retrenched the petitioner without following the statutory and mandatory provisions of section 25F of the Act and as such the termination of the petitioner is null, void, inoperative and not sustainable in the eyes of law and that the termination has been based on surmises and conjecture being violative of section 25G and 25H of the Act, 1947 as juniors to the petitioner were retained by the respondent department and that the respondent department could not have automatically retrenched the services of the petitioner as the work and conduct of the petitioner throughout his service tenure was excellent, who was appreciated by his superiors many times, who was never served with any explanation call and warning letter etc. which was ignored by the respondent department and that the termination order to remove the petitioner from service is bad in law which is against the set legal norms as the respondent has failed to pass speaking order and that the petitioner is unemployed from the date of his illegal removal and as such prayed for reinstatement in service alongwith all consequential benefits of back wages, seniority, continuity, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, suppression of material facts, no cause of action, the department of PWD is not an industry, barred by delay and laches and the petitioner does not fall within the definition of workman. On merits, it is contended that the petitioner was engaged on daily wages basis on his personal request, who was never engaged in accordance with the requirement of statutory rules, hence the question of fictional breaks does not arise. It is denied that the petitioner had completed 240 working days in twelve calendar months preceding his termination. It is contended that the petitioner has left the services of his own sweet will, who was never terminated by the respondent department, hence the question of giving any notice or following the procedure of natural justice is out of question and that the services of the petitioner was not continuous and uninterrupted with the department and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 31-10-2007 on the pleadings of the parties.

1. Whether the service of the petitioner has been illegally terminated by the respondent w.e.f. 1-6-2002 without complying with the provisions of Industrial disputes Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the petition is not maintainable in the present form? If so, its effect? ...OPR.
4. Relief.

6. I have heard the Ld. AR for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Relief.	Reference answered In affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as daily wages beldar by HPPWD Shimla Division -3 during the month of August, 1999 and continued as such till 1-5-2002 with fictional breaks, who had worked for more than 240 days in a calendar year preceding his termination, who made representation for his reengagement as per mark A. No notice nor any compensation was paid to him at the time of his termination and as such prayed for reinstatement with all benefits including back wages, seniority and continuity.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. P.D Kashyap, who has stated that he is posted as an Additional Assistant Engineer with respondent since December, 2006 and is well conversant with the facts of the case. The petitioner was engaged as daily wages beldar in August 1999, who continued as such till May, 2002 and thereafter abandoned the job of his own, who had not completed 240 working days in any calendar year preceding his termination, who never approached the respondent for his reengagement and proved the mandays chart Ex. RA and the petitioner was not regular in his job and the petitioner did not give any intimation to the respondent when he used to absent from work. The respondent never terminated the services of the petitioner and the claim of the petitioner is false.

10. Shri J.C. Bhardwaj, Ld. AR for the petitioner has vehemently argued at the very out set that since the respondent has admitted the mandays chart Ex. RA to be true and correct and after calculating the twelve calendar months preceding his termination which goes to show that the petitioner has completed 253 days but no notice nor compensation was paid to the petitioner at the time of his termination and as such his case squarely falls under section 25F of the Industrial Disputes Act, 1947, hence the petitioner is liable to be reinstated in service with all consequential benefits.

11. On the contrary, Shri Jagdish Kanwar, Ld. DDA for respondent controverted the arguments of Shri Bhardwaj and has submitted that the petitioner has miserably failed to prove on record that he had completed 240 working days in twelve calendar months preceding his termination and as such the claim of the petitioner is liable to be dismissed.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that RW-1 Er. P.D Kashyap has proved the mandays chart of the petitioner Ex. RA and the petitioner put in 121 days for five months from Jan. 2002 to May, 2002 and after calculating the previous months from December, 2001 to June, 2001 coupled with five months of the year 2002 which comes to 253 ½ days preceding from the date of the termination of the services of the petitioner. Apart from it, the petitioner has proved on record that no notice nor compensation was paid to him at the time of his termination. No doubt, that the respondent has tried to establish on record that the petitioner has abandoned the job of his own but there is nothing on record which could show that the petitioner himself abandoned the job. However, it is well settled in State of HP & Others Vs. Bhatag Ram & Another as reported in latest HJL 2007 (HP) 903 in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to the entire evidence on record, it can safely be concluded that the petitioner has completed more than 240 working days i.e 253 ½ days in twelve calendar months preceding his termination, who was terminated from service without any notice and without any compensation and obviously therefore, the case of the petitioner squarely falls under section 25F of the Industrial disputes Act, 1947 and the termination of the petitioner w.e.f. 1-6-2002 without complying with the provisions of Industrial disputes Act, 1947 is held illegal and unjustified. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2:

14. Since I have held under issue no. 1 above, the services of petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial disputes act, 1947, hence the petitioner is held entitled

for reinstatement in service alongwith seniority and continuity from the date of his illegal termination. However, the petitioner is not entitled for back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3:

15. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on Issue No.1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of June, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 15 of 2004
Instituted on 30-1-2004
Decided on 20-6-2009

Balbir Singh S/o Shri Devi Ram, R/o Village & P.O Himri, Tehsil Sunni, District Shimla, HP. ...*Petitioner.*

Vs.

The Executive Engineer, HPPWD division, Kumarsain District, Shimla, HP. ...*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R. Sharma, Ld. Csl.
For respondent : Shri Vikas Dhaulta, Ld. ADA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of services of Shri Balbir Singh S/o Shri Devi Ram daily wages beldar by the Executive Engineer, HPPWD Kumarsain District Shimla w.e.f. 8-5-1998 without complying the provisions of the Industrial disputes Act, 1947 and whereas junior to him are retained as alleged by the workman is proper and justified?? If not, what relief of service benefits, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was initially engaged as beldar on daily wages basis w.e.f. 1-4-1991 by the respondent, who worked with full sincerity, honesty, devotion and to the utmost satisfaction of his superiors till 31-12-1997 and then the services of the petitioner were transferred in HPPWD Sub division Sunni, who joined on 1-1-1998 at Sunni, who remained there till 8-5-1998 and thereafter the services of the petitioner were terminated by the respondent and that the petitioner requested for his reengagement but all in vain. The petitioner has completed 240 days in each twelve calendar months whose services were terminated by the respondent without serving prior notice upon him and juniors to him S/Shri Khem Raj, Niram Dass, Kamla Ram, Laiq Ram, Jeet Ram, Tikkam Ram, Khem Chand, Roshan lal, Prem Chand, Sant Ram, Gopal Singh, Mela Ram, Baldev Singh, Raj Kumar and Hem Raj were retained by the respondent and even fresh hands were also kept in employment

by the respondent and that the petitioner approached Administrative Tribunal for reengagement which was dismissed on the ground of jurisdiction and that the petitioner had put in more than seven years of service w.e.f. 1-4-1991 to 8-5-1998, who was expecting his regularization as per the policy of the state government and that the respondent has thrown the petitioner out of job without complying with the provisions of law and that the respondent failed to comply with the provisions of section 25F, 25G and 25H of the Industrial disputes Act, 1947 and that the respondent is guilty for adopting the policy of hire and fire and pick and choose as the petitioner has unblemished service record and as such prayed for reinstatement with all consequential benefits such as seniority, back wages, regularization and promotion, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the claim petition is not maintainable as no legal and equity rights of the petitioner have been infringed in any manner and that the petitioner was engaged on daily wages basis on seasonal work on the availability of work and funds and after the completion, the services stood disengaged orally as the petitioner failed to fulfill the legal requirement of section 25B of the Industrial disputes Act and that as per record, the petitioner was engaged only during 11/97. On merits, it is contended that the petitioner was engaged as daily wages beldar during 11/97 with other labourers by the respondent upon the availability of work/funds and upon its completion, the services of the petitioner stood automatically disengaged for short period in accordance with law upon the completion of work and no juniors to the petitioner have been engaged by the respondent and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 6.7.2005 on the pleadings of the parties.

1. Whether the termination of the services of the petitioner w.e.f. 8-5-1998 without complying with the provisions of Industrial Disputes Act, 1947 is legal and justified especially when the respondent has retained juniors to the petitioner ? ...OPR.
2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to? ...OPP.
3. Whether the claim petition is not maintainable and legal? ...OPR.
4. Whether there is no cause of action in favour of the petitioner? ...OPR.
5. Relief.

6. I have heard the Ld. Counsel for petitioner and Ld. ADA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes.
Issue No.2	Not entitled to any relief.
Issue no.3	No.
Issue No.4	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar in April, 1991, who worked till December, 1999 and then his services were terminated, who was transferred to Sunni Sub division in Jan. 1998. No notice nor compensation was paid to him, who worked for more than 240 days in each calendar year, who was engaged on the road construction. The department has engaged S/Shri Inder Dass & others, who are juniors to him. He approached the department for reengagement, who also approached the Administrative Tribunal for reengagement which was dismissed on the ground of jurisdiction. No seniority list was given to him by the department and prayed for reinstatement with all benefits.

9. To rebut the case of the petitioner, the respondent examined two RWs in all. RW-1 Shri Gurbachan Singh has stated that the petitioner was engaged as beldar, who worked for 30 days in 1997, 20 days in 1998, who left the job of his own.

10. RW-2 Er. Lekh Ram, SDO Jalog Sub Division has stated that the petitioner worked from 11/97 to 12/1997 for 34 days and then he worked for 18 days in August, 1998, who worked in Sunni Sub division from Jan. 1998 to April, 1998 for 119 days and proved the mandays chart Ex. R1. Anant Ram is chowkidar, who is still working whose mandays chart is Ex. R2. The petitioner was not removed from service, who left the job of his own.

11. The case of the petitioner is that he being a daily wages beldar having worked for more than 240 days in a calendar year preceding his termination and even juniors to him are still working with the respondent and as such his termination without following the mandatory provisions of the industrial disputes Act, 1947 is illegal, hence he is entitled for reengagement with all benefits.

12. On the contrary, the respondent contends that the petitioner was engaged as daily wages labourer for seasonal work and for specified period, who was engaged according to need of work and funds, who had not completed 240 working days in any calendar year preceding his termination and no junior to the petitioner is working with the respondent, hence the petitioner is not entitled to any relief as prayed by him.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged as daily wages beldar by the respondent, who had not worked with the respondent continuously as is evident from the statement of RW-2 Er. Lekh Ram and as such it is clear that the petitioner had not worked with the respondent for 240 days in any calendar year and even in twelve calendar months preceding his termination, hence the case of the petitioner does not fall under section 25-F of the Act. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

Now, turning to the other aspect of the case, the respondent has proved on record that the engagement of the petitioner was purely on seasonal work on the availability of the work and funds, hence the services of the petitioner stood automatically dispensed with. However, it is well settled in (2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :—

“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”

15. Similarly in 2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr. In which it was held that:—

“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”

16. Apart from it was further held incase titled as Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC. and incase titled as Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC. In which it was held that:—

“ material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”

17. Now, turning to the other aspect of the case, the petitioner also tried to establish on record that his juniors are still continuing with the respondent department but he did not prove on record that on which date they joined the department and infact they are juniors to the petitioner. On the other hand, the respondent has proved on record that the petitioner was engaged as casual labourer and the petitioner was called when the work was available with the respondent and further the petitioner was engaged for specific work and for specific time as per the need of the work and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to him for specific period and for specific work and therefore, the case of petitioner cannot be accepted for his reinstatement keeping in view the entire facts and circumstances of the case.

18. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the services of the petitioner has not been illegally terminated by the respondent without any notice or compensation being casual labourer, which is legal and justified and rather the petitioner was engaged as casual labourer for seasonal work and for specific period. Accordingly, this issue is decided against the petitioner and in favour of the respondent.

Issue No. 2:

19. Since, I have held under issue No.1 above, that the services of the petitioner has been legally dispensed with by the respondent without notice or compensation, hence the petitioner is not entitled to any service benefits. Accordingly, the issue no.2 is answered in negative.

Issue No. 3 :

20. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue No. 3 is decided in favour of petitioner and against the respondent.

Issue No. 4 :

21. In support of this issue no evidence was led by the respondent nor it was pressed during the course of arguments. However, I have scrutinized the record of the case and observed that petitioner being daily wages labourer having worked with the respondent has enforceable cause of action against the respondent. Accordingly, issue No. 4 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to above discussion and findings on issue no.1 to 4, the claim fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of June, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 98 of 2005
Instituted on 2-12-2005
Decided on. 20-6-2009

Vijender Singh S/o Shri Jagat Ram R/o Village Khabra P.O. Katal, Tehsil Nalagarh, District Solan, HP.

.. Petitioner.

Vs.

The Regional Manager, HRTC, Solan, District Solan, HP.

.. Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Ld. Csl.

For respondent : Ms. Veena Sood, Ld Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of Shri Vijender Singh S/o Shri Jagat Ram apprentice w.e.f. 4-12-2001 after expiry of apprenticeship period by the Regional Manger HRTC, Solan District Solan without complying the provisions of Industrial disputes Act, 1947 is proper and justified ? If not, what seniority/post, service benefits and relief the concerned workman is entitled to?”

2. The petitioner has filed a claim asserting therein that he after completing his matriculation examination in the year 1995 took industrial training for two years in the trade of motor mechanic during 1996 to 1998 from ITI, Solan and that after obtaining the professional qualification, the petitioner was appointed as apprentice by the respondent w.e.f. 1-12-1999 for one year which was completed on 30-11-2000 and after completion of the apprenticeship period, the petitioner was given an extension of another one year w.e.f. 1-12-2000 to 30-11-2001, who was initially given the stipend of Rs. 900/- per month which was increased to Rs. 1230/- per month w.e.f. October, 2001 and that the petitioner was working in the capacity of apprentice, who was accordingly discharging his job in the most meticulous manner and the work of the petitioner was upto the satisfaction of the concerned officials and that the apprentice period of the petitioner expired on 30-11-2000 which were extended till 30-11-2000 for which the corporation was not empowered to do and not only this, the petitioner was thereafter allowed to work as motor mechanic and that the services of the petitioner were orally dispensed with w.e.f. 4-12-2001 without any reason and without following the mandatory provisions of the Industrial disputes Act, 1947 and that the respondent has large number of vacancies of the motor mechanic which are still lying vacant and the respondent corporation is extracting the work of motor mechanic from the apprentices like the petitioner and that the oral termination of the petitioner w.e.f. 4-12-2001 is illegal, arbitrary and against the principles of natural justice and the petitioner being qualified and having the experience of one year apprentice was entitled to be observed as motor mechanic and that the respondent has not served any notice nor any show cause was issued before oral termination, who worked for more than two years and that after the illegal termination, the petitioner feeling aggrieved and dissatisfied approached the Administrative Tribunal on 12-12-2001 which was dismissed on the ground of jurisdiction and that the respondent has employed motor mechanic on contract basis but the petitioner was not called by the respondent and that the petitioner has every right to continue in the job till the date of superannuation and as such prayed for reinstatement w.e.f. 4-12-2001 with continuity in service alongwith other consequential benefits including back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the reference made by the appropriate government is neither competent nor maintainable as the petitioner was not a workman as defined under section 25 of the ID Act, 1947, who was only apprentice who had no right to claim a regular and permanent job and that the petitioner is gainfully employed and earning 10,000/- to 15,000/- per month. On merits, it is contended that the petitioner being sponsored to HRTC, Solan unit for undergoing apprentice training in the trade of motor mechanic and apprentice is just a learner and not a workman and that the monthly remuneration of Rs. 900/- and 1230/- was given to the petitioner during the period of apprenticeship in accordance with the terms and conditions of the agreement having been executed between the petitioner and the respondent and that the petitioner being employed as apprentice from 1-12-2000 to 30-11-2000 and then from 1-1-2001 to 30-11-2001, who has no right to claim any job after the expiry of the apprentice period and the petitioner had agreed in the agreement that the HRTC should have the right to assign any suitable job related to motor mechanic trade and that the petitioner was aware that his apprenticeship with the respondent would end on 30-11-2001 which was extended as per the decision and policy of the respondent. It is also contended that the completion of 240 days during the apprenticeship would not entitle the petitioner to any benefit under the provisions of Industrial disputes Act, 1947 and that the name of the petitioner was not sponsored from the employment exchange after the completion of his apprenticeship period and that the petitioner being apprenticeship was governed by apprenticeship Act and Rules and as such prayed for the dismissal of claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 29-5-2007 on the pleading of the parties:

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial disputes Act, 1947? If so, its effect? ...OPP.
2. If issue No. 1 is proved in affirmative, to what relief the petitioner is entitled to? ...OPP.

3. Whether the present reference is not maintainable and the petitioner is gainfully employed? ...OPR.
4. Relief.
6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1.	Yes.
Issue No. 2.	Entitled for reinstatement in service along with seniority and continuity but without back wages relief.
Issue No. 3.	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner has examined three PWs in all. PW-1 Shri R. P. Sharma, Junior assistant, ITI Solan has stated that the petitioner had undergone training of motor mechanic and proved the certificate Ex. PA and the petitioner had applied for sending him on apprentice training in HRTC and the petitioner was deputed for training from 1-12-1999 to 30-11-2001 and the candidate was deputed for apprenticeship training according to the requirement of the job and in case of motor mechanic, the apprentice period is one year and proved the apprentice rules Ex. PD. The petitioner served the notice which they replied. They had written to the HRTC that the apprentice period of the petitioner should not be extended. Copy of the reply is mark X.

9. PW-2 Shri Harpal Singh, Junior Assistant HRTC, Solan has stated that the petitioner was engaged as apprentice for one year w.e.f. 1-12-1999 to 30-12-2000 and they deputed the petitioner with the mechanic out side and the duty pass of the petitioner was traceable in the record. The petitioner was deputed to work with mechanics Ishwar Dass and Omparkash etc. as per detail given in the passes. They have received letter Ex. PE and the petitioner had worked for three days beyond the extended period of the apprenticeship upto 4-12-2001 and they had extended the period of apprenticeship of the petitioner as per permission of the head Office and there is no permission from ITI for extending the apprenticeship period.

10. The petitioner stepped into the witness box as PW-3, who has stated that he passed his matriculation in 1995 and then he took industrial training for two years in the trade of motor mechanic during 1996 to 1998 from ITI Solan and the copy of certificate is Ex. PA, who was appointed as apprentice by the respondent w.e.f. 1-12-1999 to 30-11-2000, who completed apprenticeship period on 30-11-2000 and thereafter he worked with the respondent till 4-12-2001 as daily wages motor mechanic. The respondent has extended his apprentice period without any permission from ITI and the respondent used to issue duty passes Ex. PW-1/A and Ex. PW-1/B and Ex. PX-3 is also duty pass issued by the respondent and he used to go out side of the workshop for repairs of the buses standing on different routes whose services were terminated by the respondent w.e.f. 4-12-2001 without notice and without compensation. The respondent has also engaged new persons on contract basis. After his illegal termination, he filed an O.A. before the Administrative Tribunal which was withdrawn by him on the ground of jurisdiction and then he filed demand notice Ex. PW-1/C before the conciliation officer, Solan, who visited the office of the respondent number of times for his reengagement but he was not reengaged and after his termination, he is unemployed. He had completed more than 240 days in a calendar year, hence prayed for reinstatement with all consequential benefits.

11. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Ashok Kumar, Senior Assistant, HRTC, Solan, who has stated that the petitioner was engaged as apprentice trainee w.e.f. 1-12-1999, who continued as such during the training till 30-11-2000 and then on 1-12-2000 to 30.11.2001 and the petitioner was also deputed with the mechanic for training and then the training period of the petitioner automatically came to an end and they employ the permanent employees through the employment exchange and the name of the petitioner was never sponsored through employment exchange.

12. Shri R.K Khidta, Ld. Csl. for the petitioner has vehemently argued at the very outset that since the petitioner was appointed by the respondent as apprentice for a period of one year, whose apprenticeship period was extended for another one year by the respondent without any approval from ITI, who had completed more than 240 working days preceding his termination, who was illegally terminated by the respondent without notice and without compensation and as such the petitioner is liable to be reengaged with all consequential benefits including back wages.

13. On the contrary, Mrs. Veena Sood, Ld. Csl. for respondent controverted the arguments of Shri Khidta and has submitted that the petitioner was engaged as apprentice for a period of one year on stipend of Rs. 900/- whose apprenticeship period was further extended for another year after the approval from the head office and after the completion of his apprenticeship, the services of the petitioner automatically came to an end and even the petitioner was not a workman under section 25 of the Industrial Disputes Act, 1947 being the trainee and the name of the petitioner was not sponsored by the employment exchange, hence the petitioner is not entitled to any relief.

14. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

15. After the close scrutiny of the record of the case, it remains a fact that the petitioner was appointed as apprentice by the respondent w.e.f. 1-12-1999 to 30-11-2001 whose apprenticeship period was expired on 30-11-2000 but his apprenticeship period was extended for further one year by the respondent without the approval of the ITI, Solan and the petitioner was allowed to continue for more than two years and four days i.e from 1-12-1999 to 30-11-2001 which is not disputed by both the parties. Apart from it, it is fully proved on record that the petitioner had worked for 333 days in twelve calendar months preceding his termination as is evident from mandays chart Ex. PX which clearly goes to show that the respondent has extended the apprenticeship period of the petitioner without any basis and foundations without the approval of ITI Solan, who was terminated from service without notice and without payment of compensation which is clear violation of principle of natural justice and moreover, no permission from the ITI, Solan was obtained by the respondent corporation to extend the apprenticeship period of the petitioner, who was terminated orally on completion of 333 days by the respondent without serving any notice under section 25-F of the Industrial Disputes Act, 1947. No doubt, that the respondent has tried to establish on record that the petitioner was engaged as apprentice for a fixed period of one year but it remains a fact that the services of the petitioner were extended for further one year by the respondent. Here I am fortified with a view taken by their lordships of Hon'ble High Court of Rajasthan reported in 1994 LAB I.C 1925 incase titled as R.S.R.T.C Jaipur Vs. jagdish Vyas and others in which it was held that:

“Petitioner appointed as apprentice for one year subsequent to that date. Terms of apprenticeship neither extended nor formal order of appointment passed. Petitioner allowed to continue in service for more than two years after expiry of the period of the apprentice. The petitioner has to be treated as a workman from expiry of the training period. His services cannot be terminated without complying with section 25-F of Industrial disputes Act.

No doubt, that the respondent has also tried to establish on record that the name of the petitioner was not sponsored by the employment exchange, hence the petitioner has no right over the post. I find no force in this contention as it is well settled by Hon'ble Supreme Court incase titled as Union of India and other Vs. N. Hargopal and others as reported in AIR 1987 SC 1227 in which it was held that :

“Employment exchange (Compulsory notification of vacancies) Act (31 of 1959), pre, section 4(4). Scope. Act does not oblige any employer to employee those person only who have been sponsored by employment exchange.”

Thus, having regard to the entire evidence on record and on the strength of above cited rulings, it can safely be concluded that the services of the petitioner have been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

Issue No. 2 :

16. Since I have held under issue no.1 above that the services of the petitioner were illegally terminated by the respondent, hence the petitioner is held entitled for his reengagement with seniority and continuity after the completion of apprentice period i.e w.e.f. 1-12-2000 but without back wages inview of the peculiar circumstances of the case. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No. 3.

17. In support of this issue, no evidence was led by the respondent being the legal issue. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form and furthermore the respondent has also failed to produce any evidence on record which could show that the petitioner is gainfully employed after his termination. Accordingly, issue No. 3 is decided against the respondent and in favour of the petitioner.

RELIEF

As a sequel to my above discussion and findings on issue No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity after the completion of apprentice period i.e w.e.f. 1-12-2000 but without back wages in view of the peculiar circumstances of the case and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th Day of June 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 30 of 2005
Instituted on 4-2-2003
Decided on 16-6-2009

Dwarika Mishra C/o Shri Piyare Lal Duni Chand Sharma, R/o Village Barotiwala, P.O Baddi, District Solan,
HP. . . Petitioner.

Vs.

The Managing Director, M/s Deepak Spinners Ltd. Baddi, District Solan, HP. . . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri O.P. Sharma, Ld. Csl.
For respondent : Shri Jagdish Thakur, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of services of Shri Dwarika Mishra by the Managing Director M/s Deepak Spinners Ltd. Baddi district Solan HP w.e.f. 21-2-2002 without any notice, charge sheet and without any service benefits as alleged by the workman is proper and justified? If not, what relief of service benefits the above workman is entitled ?”

2. The petitioner has filed a claim asserting therein that he was engaged as workman by the respondent in May, 1995 and that the petitioner worked on various jobs such as Security Guard for three years and then the petitioner was transferred to Polyspin where the petitioner met with an accident while working on machine whose fingers of right hand were cut and after recovery, he was forced to go on leave and that the services of the petitioner were terminated w.e.f. 21-2-2001 without any notice, chargesheet and without any service benefits and that the action of the respondent management is illegal and that the petitioner is a poor man and that the petitioner had worked with the respondent w.e.f. May, 1995 to 21-2-2002 and that the petitioner had not given the benefits of seven years of service and as such prayed for reinstatement alongwith full back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of non maintainability, abandonment and violation of the certified standing orders of the company. On merits, it is contended that the petitioner was employed by the respondent in Deepak Poly Spin on 9-4-1998 @ Rs. 92.50 per day and that the petitioner had met with an accident while working with the respondent in which he lost his fingers and as such became permanent disabled to perform the duty on machine and the respondent company offered the light job to the petitioner. The petitioner is also getting the disability pension from ESI Corporation, who worked with the respondent till 31-12-2001. It is also contended that the petitioner was sent on leave for fifty two days w.e.f. 5-1-2002 to 25-2-2002, who again applied for leave w.e.f. 2-3-2002 to 7-3-2002, 8-3-2002 to 12-3-2002 and after 12-3-2002, the petitioner did not report for duties and then the respondent company vide letter dated 23-3-2002 asked the petitioner to report for duties within three days from the date of receipt of notice, who did not join his duties, who was again asked to report for duties vide letter dated 30-3-2002 but the petitioner did not report

for his duties and as such according to clause (D) (1) of section 5 of certified standing orders, the petitioner deemed to have abandoned the job. It is denied that the respondent has terminated the service of the petitioner, who abandoned the job of his own and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 3-4-2006 on the pleading of the parties:

1. Whether the service of the petitioner has been illegally terminated by the respondent on 21-2-2002? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to and from whom? ...OPP.
3. Whether the petition in the present form is not maintainable? ...OPR.
4. Whether the petitioner has abandoned the job at his own and is not entitled for any relief? ...OPR.
5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1.	Yes.
Issue No. 2.	Entitled for reinstatement in service alongwith seniority and continuity but without back wages.
Issue No. 3.	No.
Issue No. 4.	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1 & 4:

8. Both these issues are taken up and discussed together being interlinked and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined himself as PW-1, who has stated that he was engaged as trainee on binding machine in 1995 and then he was deputed as Security Guard, who went on leave to his home and when he returned, he was deputed for machine training where he met with an accident and then he was deputed on courier duty and thereafter he was sent on leave and after his return from leave, no work was provided to him and he was terminated from service without any notice and compensation and as such prayed for reinstatement.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Jai Bahadur Kaushik, who has stated that the petitioner was engaged as worker on daily wages on 9-4-1998, who continued as such till 12-3-2002 and in 1999, the petitioner had met with an accident while on duty and one of his finger was amputated and as such the petitioner was deputed on courier duty. On 5-1-2002, the petitioner proceeded on leave and thereafter he went on extending his leave on one pretext or the other, who made an application for leave from 5-1-2002 to 25-2-2002 and then extended leave from 2-3-2002 to 7-3-2002 and then from 8-3-2002 to 12-3-2002 but the petitioner did not join his duties and on 23-3-2002, a show cause notice Ex. RA was issued to the petitioner through UPC but no reply was given by the petitioner and again show cause notice dated 30-3-2002 Ex. RB was issued through UPC to the petitioner but no reply was given by the petitioner and according to the standing orders Ex. RC, the petitioner has lost his lien over the post.

10. The case of the petitioner is that he being the daily wages worker having worked with the respondent for more than 240 working days in each and every calendar year preceding his termination, who met with an accident while working on machine with the respondent company and even no notice nor compensation was given to the him by the respondent company at the time of his termination, who was illegally terminated by the respondent company without any reason, hence he is entitled for his reinstatement with all benefits.

11. On the contrary, the respondent contends that the petitioner was not terminated from service by the respondent, who applied for leave and did not report for duties and as such the petitioner lost his lien over the post, hence the petitioner is not entitled to any relief.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is clear that the petitioner had worked with the respondent as daily wages worker w.e.f. 9-4-1998 to 21-2-2002. No doubt, that the petitioner has claimed to have been worked with the respondent company w.e.f. May, 1995 but the petitioner has failed to prove on record that he was engaged by the respondent company in the year May, 1995 as no record from the office of the respondent company was summoned by the petitioner. It is not disputed that the petitioner had worked with the respondent company as daily wages worker, who met with an accident while working on the machine and one finger of the petitioner was amputated for which the petitioner is getting disability pension from ESI. It is also not disputed that the petitioner had worked continuously with the respondent till 21-2-2002 when the petitioner was not allowed to resume his duties. No doubt, that the respondent has tried to establish on record that the petitioner has abandoned the job of his own but it is well settled in State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

14. Thus, having regard to entire evidence on record and in view of the fact that the petitioner having completed 240 working days in twelve calendar months preceding his termination is not disputed by the respondent. It is borne out from the record that though the petitioner had proceeded on leave from time to time and applied for extension of leave but there is nothing on record which could show that any domestic enquiry was conducted by the respondent against the petitioner which led to the removal of the petitioner from service. It is well settled by the Hon’ble Supreme Court in case titled M/s Scooters India Ltd. Vs. M. Mohd. Yaqub as reported in 2001 LLR 54 SC. In which it was held that:—

“Even when the workman remained absent failed to report for duty. It was imperative to follow the principles of natural justice by giving the opportunity. In the instant case, the labour court has categorically held that the workman had not been allowed to resume his duty there is violation of the principles of natural justice.”

15. Thus, having regard to the entire evidence on record and on the strength of the abovesaid rulings, it can safely be concluded that the services of the petitioner have been illegally terminated by the respondent without following the provisions of Industrial Disputes Act, 1947 and further the petitioner has not abandoned the job of his own. Accordingly, both these issues are decided in favour of petitioner and against the respondent.

Issue No. 2:

16. Since I have held under issue no.1 & 4 above that the services of the petitioner were illegally terminated by the respondent without any notice, charge sheet and without any service benefits is improper and unjustified, hence the petitioner is entitled for his reengagement in service with seniority and continuity but without back wages as the petitioner has failed to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided against the petitioner and in favour of the respondent.

Issue No. 3:

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4 above, the claim of the petitioner succeeds and is hereby allowed and the petitioner is ordered to be reinstated in service alongwith seniority and continuity from the date of his initial engagement but without back wages as the petitioner has failed to substantiate that he was not gainfully employed after his removal and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 16th Day of June 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 64 of 2005
Instituted on 2005
Decided on 22-6-2009

Prem Raj S/o Shri Ram Chand, R/o VPO Mahasu, Tehsil Kotkhai, District Shimla, HP. . . *Petitioner.*

Vs.

1. The Managing Director, HP Tourism Development Corporation, Shimla-1.
2. The Assistant Engineer, Tourism Development corporation, Sub Division Barog, Tehsil & District, Solan HP. Now at Holiday Home Hotel, Shimla HP. . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J. R. Sharma, Ld. Csl.
For respondent : Respondent already exparte.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of services of Shri Prem Raj S/o Shri Ram Chand ex daily wages junior draughtsman by the Managing Director, HP Tourism Development Corporation, Shimla-171001. 2. The Assistant Engineer, Tourism Development corporation, Sub Division Barog, Tehsil & District, Solan HP. Now at Hotel Holiday Home, Shimla w.e.f. 8-3-2000 without complying the provisions of the Industrial disputes Act, 1947 is proper and justified? If not, to what relief of consequential service benefits including reinstatement, seniority, back wages and amount of compensation, the above aggrieved workman is entitled?”

2. The petitioner has filed a claim asserting therein that he was initially appointed as beldar on daily wages basis with the respondents corporation w.e.f. 8-4-1997, who remained till 30-4-1998 as beldar and that during this period, the petitioner has been discharging his duties to the best of his ability and thereafter keeping in view the efficient working of the petitioner, his designation was changed/converted as junior draughtsman, who remained as such w.e.f. 15-1-1998 to 8-3-2000 and then the services of the petitioner have been terminated without assigning any reason and that against oral termination, the petitioner approached Administrative Tribunal but the O.A was dismissed on the ground of jurisdiction and that the respondents have acted contrary to the well settled provisions of law while terminating the services of the petitioner as the petitioner had worked with the respondents during the service with full sincerity, honesty, devotion, missionary zeal as well as to the utmost satisfaction of his superiors and the work and conduct of the petitioner was always appreciated by his superiors, who had completed 240 working days in each calendar year and as such the respondents were under legal obligation to comply with the provisions of section 25F, 25G and 25H of the Industrial Disputes Act, 1947 and even juniors to him are still working with the respondent and that the action of the respondents in terminating the services of the petitioner is highly illegal, arbitrary, discriminatory and unconstitutional and that the petitioner after his termination, kept visiting the officers of the respondents number of times but to no avail and as such prayed for reinstatement at the same place and post, seniority, continuity, regularization and promotion, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability as the petitioner was initially engaged as unskilled worker to assist the field staff of Engineering Wing at Barog for limited period, who was engaged on contractual basis for a period of 89 days. On merits, it is contended that the petitioner was engaged as unskilled worker to assist the Engineering Wing at Barog on contract basis for a period of 89 days and the first agreement was entered between the petitioner and Assistant Engineer, HPTDC, Barog on 8.4.1997 to 30-4-1998 indicating the period of engagement for 89 days. It is also

contended that the petitioner was deployed as junior draughtsman on contract basis and the agreement was entered between the parties on 7-5-1998 to 4-8-1999 indicating the period and the petitioner ceased to be in contract service on expiry of the period of the last agreement on 31-12-1999, hence the oral termination of the petitioner does not arise and that the disengagement on the expiry of last stipulated period is neither termination nor retrenchment within the provisions of Industrial Disputes Act, 1947 and there was no one in corporation, who was engaged on such agreement after the disengagement of the petitioner and that all the pleas of the petitioner based on conjectures and surmises which is devoid of any force and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 20-11-2008.

1. Whether the termination of services of Shri Prem Raj ex daily wages junior draughtsman by the respondents w.e.f. 8-3-2000 without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified as alleged? ...OPP.
2. If issue no.1 is proved, to what relief of service benefits, the petitioner is entitled to? ...OPP.
3. Whether the claim is neither competent nor maintainable as alleged? ...OPR.
4. Relief.

6. It is important to mention here that the respondents did not turn up on 20.4.2009, hence were proceeded against exparte as per order dated 20.4.2009.

7. I have heard the Ld. Counsel for the petitioner and have gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement alongwith seniority and continuity but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No :

9. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as daily wages beldar by the respondent on 8-4-1997 and continued as such till 30-4-1998 and then the department conducted a test for appointment of Tracer Draughtsman, who also qualified the test and got appointment as Tracer Draughtsman on 1-5-1998 and continued as such till 8-3-2000 and then he was terminated from service without any notice and without compensation, who worked with the respondent for 240 days in each calendar year preceding his termination and the mandays chart is mark A. Junior to him smt. Surekha Negi is still working with the respondent and as such prayed for reinstatement in service with all consequential benefits including back wages.

10. On the contrary, the respondents did not lead any rebuttal evidence as they were proceeded against exparte.

11. I have considered the respective contention of the petitioner and have scrutinized the record of the case.

12. After the close scrutiny of unrebutted exparte evidence on record and having regard to the fact that the petitioner has categorically stated on oath that his junior Smt. Surekha Negi is still working with the respondent corporation and further he was engaged by the respondent as beldar on 8-4-2009, who continued as such till 30.4.1998 and then the petitioner worked with the respondent as tracer draughtsman w.e.f. 1-5-1998 to 8-3-2000 and obviously

therefore, on the basis of un rebutted exparte evidence on record, I have no option but to hold that the termination of the petitioner from service by the respondent corporation as Tracer Draughtsman w.e.f. 8-3-2000 without notice and without payment of compensation and further more his junior Smt. Surekha Negi is still continuing with the respondent is illegal and improper and as such this issue is decided in favour of petitioner and against the respondent.

Issue No. 2:

13. Since I have held under issue no.1 above, that the services of the petitioner have been illegally terminated by the respondents without complying with the Industrial Disputes Act, 1947, hence the petitioner is held entitled to be reinstated in service with continuity and seniority. However, the petitioner is not entitled to any back wages as he has not placed any material on record that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No. 3:

14. In support of this issue, no evidence was led by the respondent being the legal issue. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable and competent. Accordingly, issue no.3 is decided against the respondent and in favour of the petitioner.

RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds exparte and is hereby allowed exparte and as such the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service in which capacity he had worked at the time of his termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 22nd Day of June, 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref. No. 46/2008
11-6-2009

Sh Gurmit Singh & others

V/s

Gen Manager, M/s Stove Kraft India, Solan.

Present: None for the petitioner.

Sh O. P. Sharma , Ld. Csl for respondent.

It is 3.44 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the petitioner. It seems that the petitioner is not interested to persue this case. Accordingly, the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File , after completion , be consigned to records.

Announced :
11-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. 290/2003
6-6-2009

Smt Savita Singh

V/s

M/s Deepak Spinner Ltd, Baddi Distt Solan

Present: Sh. Mehar Chand , Ld Vice Csl for petitioner.
Sh Jagdish Thakur, Ld, Csl for respondent.

No PWs present nor any steps taken. I am satisfied that sufficient opportunities have been afforded to the petitioner to bring her evidence but to no avail, hence the evidence of the petitioner is closed by the order of Court.

Heard. In view of no evidence on record, issue No. 1 is decided in favour of respondent and against the petitioner holding that the services of the petitioner have not been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 for want of evidence and as such the petitioner is not entitled to any relief of service benefits. Accordingly, the claim of the petitioner is dismissed for want of evidence on record as a result of which the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion , be consigned to records.

Announced:-
6-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref. 117/2006
2-6-2009

Sh. Hardeep Singh

V/s

The Manager M/s Pamvi Tissues Ltd Barotiwala, Distt Solan

Present: Sh. J.C. Bhardwaj, Ld.AR for petitioner.
Sh Rahul Mahajan,Ld Csl for respondent.

Heard. This claim stands compromised. Let the statement of Sh. J. C. Bhardwaj, Authorized Representative of the petitioner be recorded on oath.

Statement of Shri J. C. Bhardwaj, Ld. AR for the petitioner.

.....

On. S.A.
2-6-2009

Stated that I am fully authorized and competent to make this statement on behalf of the petitioner. The matter has been amicably settled this dispute with the respondent and as such the matter has been finally settled between the parties and the compensation has been received by the petitioner and as such nothing is to be claimed and recovered from the respondent company and the petitioner shall not claim his reinstatement and back wages and as such this claim of the petitioner may be dismissed as satisfied.

R.O. & A.C.
J. C. Bhardwaj, AR

Statement recorded separately . I am satisfied that Sh J. C. Bhardwaj, Ld AR has made the statement on the dissection of the petitioner and the compensation has been received by the petitioner, who is satisfied with the compensation and as such the petitioner does not want to persue this claim, who has forgone his reinstatement and back wages voluntarily being full & final settlement of his claim. Accordingly, the claim of the petitioner is dismissed as satisfied and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court.

2-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 135 of 2006
Instituted on 16-10-2006
Decided on 15-6-2009

Pardeep Kumar ex Conductor C/o General Secretary, Himshakti Parivahan Nigam Karamchari Sangh 92/2
Dhingoo Temple road, Near Military Gate, Sanjauli Shimla-6, HP. ...Petitioner.

Versus

1. The Regional Manager, HRTC, Nahan, Distt. Sirmour, HP.
2. The Divisional Manager, HRTC Shimla, Division-4, HP.
3. The Managing Director, HRTC, Shimla-3

...Respondents

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri N. S. Chauhan, Ld. Csl.
For respondent : Shri Shashi Shirshoo, Ld. Csl.

AWARD

1. Initially the joint reference of Pardeep Kumar and Purshotam Chand was sent to this court for adjudication but my Ld. Predecessor raised the objection that the separate references should have been sent as both these conductors whose services were terminated on 23-7-1997 and 20-6-1998 and the HRTC has taken the disciplinary action against both the conductors separately and even their services were also terminated on different dates and on the direction of my Ld. Predecessor, the reference was sent to the Labour Commissioner, who in compliance of the direction, sent two separate references of Pardeep Kumar and Purshotam Chand conductors which are registered as reference No. 135/06 and 136/06. It may not be out of place to mention here that when the direction was passed, the evidence of the petitioner was already recorded. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the domestic enquiry conducted by the Regional Manager HRTC, Nahan, District Sirmour, HP against Shri Pardeep Kumar ex conductor and termination of his services w.e.f. 23-7-1997 on the basis of enquiry is proper and justified? If not, what relief of service benefits, back wages and seniority above workman is entitled to?”

2. The petitioner has filed a separate claim asserting therein that the Himachal Road Transport Corporation is an industry and he is a workman and the petitioner has raised a dispute to the Regional Manager, HRTC Nahan Unit under the provisions of the Industrial disputes Act, 1947 and that the petitioner was appointed as daily wages conductor during the year 1982, who was regularized as conductor after completion of period of 240 days as daily wages service w.e.f. 1-12-1983 in the pay scale of Rs. 400-500 by the Regional Manager, HRTC, Baijnath unit and that while the petitioner was on rolls of HRTC, Pathankot Unit, who was deputed with the bus no. HP 38-2439 on 24-8-2003 catering as Haridwar- Pathankot service and the bus was checked by S/Shri Gurdial Singh, Tarsem Singh and Karnail Singh inspectors at Talwara which was a night bus service and there were 54 ½ passengers at the time of checking in the bus and they detected three passengers travelling from Haridwar to Raja ka Talab with tickets issued only for Rs. 92/- as

fare from Chandigarh to Amb by the conductor and the checking officials submitted checking report against the petitioner without written statement of ticketless passengers and it was a presumption of the checking officials that these passengers were travelling from Haridwar to Raja ka Talab and the conductor had already collected the full fare amounting to Rs. 226/- and the tickets were issued short of Rs. 92/- whereas fare amount was Rs. 226/- from Chandigarh to Amb station and that the workman was placed under suspension by the Regional Manager, HRTC, Pathankot Unit vide his office order dated 28-8-1993, and the petitioner was chargesheeted under Rule 14 vide chargesheet dated 22-9-1993 by the Regional Manager, HRTC Pathankot Unit and after completion of a period of eight months, the petitioner was reinstated into service w.e.f. 18-4-1994 without prejudice to the departmental proceedings pending against him at Chamba vide office order dated 24-4-1994 by the Regional Manager, HRTC Chamba Unit and the pending departmental proceedings against the workman was entrusted to the enquiry officer HRTC Dharamshala, during the year, 1994 and that the petitioner presented himself before the enquiry officer time and again and defended his case. The Enquiry Officer had examined two prosecution witnesses S/Sh. Karnail Singh and Tarsem Singh Inspectors. During the course of enquiry in the matter, Sh. Karnail Singh, inspector has disclosed before the enquiry officer and also recorded his statement that he had not recorded any statement in writing of the ticket less passengers at the time of checking who had also disclosed that it was not necessary in the case, whereas they have submitted the checking report against the petitioner and the petitioner was placed under suspension against the checking report, hence, it is clear that the checking report was wrong and baseless. The petitioner has admitted that three passengers were travelling from Chandigarh to Amb and the conductor had issued three tickets amounting to Rs. 92/- in the night bus service and all these three passengers reached at Talwara due to sleep and the bus was checked by the Inspectors at Talwara at 5.30 A.M and the passengers were very much surprised and worried about their fault in the matter and they were de-boarded from the bus at Talwara Bus Stand after checking the bus service and that Sh. Tarsem Singh, Inspector has also supported the version of Sh. Karnail Singh, Inspector before the enquiry. The petitioner had made a written request to the enquiry officer vide application dated 27-9-1995 that he would produce the said passengers as defence witnesses which was rejected by the enquiry officer and as such, it is against the principle of natural justice and based against the petitioner and that the enquiry officer could not adopt the proper enquiry process under the provisions of Rules, who had completed the enquiry process and submitted the report on 30-11-1995 and the Regional Manager, HRTC Chamba Unit issued a show cause notice to the petitioner against the enquiry report vide office order dated 1-1-1996 with the conclusion that he is not a fit person to be retained in the service and as such, served with a show cause notice of removal from service. The petitioner has submitted his reply to the Regional Manager, HRTC Chamba vide letter dated 13-1-1996 and the petitioner was on the rolls of the Regional Manager, HRTC Nahan in the year 1997, who was removed from service w.e.f. 23-7-1997 by the R.M. HRTC Nahan vide office order dated 23-7-1997 and that the enquiry officer erred in not affording full opportunity to the petitioner to cross-examine all the PWs and DWs. The checking report was submitted without carefully reading the statements of the passengers, who were found travelling without tickets and as such, it is clear that the enquiry process was not completed in a proper manner and that the petitioner was charge sheeted by the R.M HRTC Pathankot during the year 1993, whereas show cause notice was issued after completion of the enquiry during the year 1996 by the R.M. HRTC Chamba and the petitioner had submitted his reply to the R.M. HRTC Chamba on 13-1-1996 and the petitioner was removed from service by the R.M HRTC Nahan without considering his reply and thereafter, the petitioner had preferred an appeal before the Divisional Manager, HRTC Shimla on 27-12-1997 against the removal order which was rejected by the Divisional Manager with the remarks that the workman was involved in 48 cases of ticket less travelling during the span of 10 years service and as such, prayed that the removal order from service vide office order dated 23-7-1997 may be quashed and set aside being illegal and against the principle of natural justice and for his reinstatement w.e.f. 23-7-97 alongwith all service benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia raising preliminary objections that the nature of facts of the cases are entirely different in view of the dates of appointments, termination, chargesheets, enquiry as well as the authorities, who conducted the enquiry and imposed the penalties on the petitioners, hence the reference is not maintainable and that the claim is not filed by an authorized agent. On merits, it is contended that Sh. Pradeep Kumar was on the roll of Pathankot Unit during August, 1993 and on 24-8-1993, who was on duty with bus No. HP. 38-2439 catering as Haridwar-Pathankot night service which was checked at Talwara at 5.30 A.M by S/Sh. Gurdial Singh, Tarsem Singh and Karnail Singh, Inspectors of HRTC Una and at the time of checking there were 54 ½ passengers in the bus and three passengers were travelling from Haridwar to Raja Ka Talab and petitioner had collected fare charges amounting to Rs. 318/- from them but issued tickets for Rs. 92 only from Chandigarh to Amb and as such, the petitioner had issued short tickets for Rs. 226/- to them and the petitioner embezzled the corporation revenue to the tune of Rs. 226/- and that for this misconduct, the petitioner was placed under suspension w.e.f. 28-8-1993 by the R.M HRTC Pathankot and chargesheeted under Rule 14 of C.C.S. Rules, 1965 vide Memo. dated 22-9-1993, as the petitioner attempted to embezzle the corporation revenue to the tune of Rs. 226/- and deliberately indulged in dereliction in duty with malafide intention and habitual offender of these charges. The R.M HRTC Pathankot entrusted the case to R.M HRTC Dharamshala for enquiry vide order dated 14-10-1993 and the petitioner under suspension was transferred from Pathankot to Chamba and reinstated there w.e.f. 18-4-1994 without prejudice to the departmental proceedings pending against him and that the Enquiry Officer examined the prosecution witnesses during the course of enquiry and also afforded full opportunity to the petitioner to

defend his case but he did not produce any evidence in his defence and as such, the Enquiry Officer proved the charges levelled against the petitioner and that the enquiry officer adopted the proper procedure and completed the enquiry, who submitted his report to disciplinary authority i.e. R.M HRTC Chamba for further action and after considering the enquiry report and keeping in view the gravity of the case the R.M HRTC Chamba issued a show cause notice for removal from service to the petitioner vide order dated 1-1-1996 and the petitioner submitted his reply to show cause notice to R.M HRTC Chamba and the petitioner was again placed under suspension w.e.f. 19-10-1995 in another case, who was transferred to Nahan unit w.e.f. 24-5-1996, who was reinstated into service at Nahan w.e.f. 6-6-1996 without prejudice to the departmental proceedings pending against him and on his transfer his pending cases were sent from Chamba to Nahan. The case in which show cause was issued to the petitioner was also pending against him and the then R.M HRTC Nahan called the petitioner for personal hearing and also considered his reply to show cause notice, who imposed the penalty of removal from service upon the petitioner w.e.f. 23-7-1997 vide order dated 23-7-1997 and that the enquiry officer afforded full opportunity to the petitioner during the course of enquiry but the petitioner failed to produce even a single witness in his defence and that the petitioner was charge sheeted on 22-9-1993 by R.M HRTC Pathankot as the petitioner was on the rolls of Pathankot unit at that time, who was transferred from Pathankot to Chamba under suspension during April, 1994, who was reinstated at Chamba w.e.f. 18-4-1994 and the enquiry was completed during November, 1995. The show cause notice was issued to the petitioner on 1-1-1996 by R.M HRTC Chamba being Disciplinary Authority of the petitioner and that the petitioner preferred an appeal to the Divisional Manager, HRTC Shimla against the penalty of removal from service imposed upon him vide order dated 23-7-1997 which was rejected by the appellate authority vide order dated 18-6-1998 and as such, prayed for the dismissal of the claim petition.

4. It may be submitted here that no issues were framed by my Ld. Predecessor as issues were already framed on the joint reference but keeping in view the pleadings of the parties, the following points arise for determination in this case are:

1. Whether the domestic enquiry conducted by the Regional Manager, HRTC, Nahan, Distt. Sirmour, HP against Shri Pardeep Kumar petitioner and termination of his services w.e.f. 23-7-1997 on the basis of enquiry is improper and unjustified as alleged?
2. If point no.1 is proved, to what relief of service benefits, back wages and seniority, the petitioner is entitled to?
3. Relief.

5. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the points for determination, my findings on the aforesaid points are as under:—

Point No. 1	No.
Point No. 2	Not entitled to any relief.
Relief :	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Point No. 1:

7. In support of this point, the petitioner has examined three PWs in all. The petitioner has stepped into the witness box as PW-1, who has stated that he was appointed as conductor by the respondent in 1982 whose services were regularized in 1983 and his Appointing Authority was Divisional Manager, HRTC. On 24-8-1993 he was coming from Haridwar to Pathankot in bus no. HP 38-2439 and when the bus reached at Talwara was checked by Chief Inspector Gurdial, Inspector Tarsem Singh and Karnail Singh. He was also present with the Chief Inspector when three passengers were found without tickets. These Passengers came from Chandigarh to Amb and since they were sleeping in the bus, they reached at Talwara. The inspector made the enquiry from the passengers, who admitted their fault that they had come upto Talwara and the inspector asked the passengers to pay Rs. 500/- each as penalty for travelling without tickets. No statement of the passenger was recorded and even his cash was not counted by the checking party. The checking party inspector took certain tickets without his consent. These passengers asked for the tickets from Chandigarh to Amb which he had issued to them and then the enquiry was conducted against him which was not properly conducted as no opportunity to produce his evidence and to cross examine the witnesses was given to him, who made one application to the Enquiry Officer for producing his witnesses which was rejected and the exparte orders were passed against him. After the enquiry, show cause notice was given to him by R.M HRTC, Nahan and he was terminated from service after one month of his personal hearing. He made an appeal against the punishment and submitted the affidavit of the passengers which was also rejected per Ex. PA. He was removed from service by R.M, who was not the competent authority and as such prayed for reinstatement with all benefits.

8. PW-2, Ashok Kumar, Passenger has stated that on 24-8-1993, he was coming from Chandigarh to Amb alongwith his wife and mother in HRTC bus and the fare was Rs. 33/-. He had paid Rs. 100/- to conductor, who issued tickets to him in night bus service. They had to alight at Amb but since they were sleeping, they reached at Talwara in the bus and some body gave him push in the bus and asked for tickets which he had given. Checking staff asked from him where he wanted to get down, who told that he alongwith his wife and mother had to get down at Amb and the checking staff informed that he had reached near Talwara. The conductor was not at fault and the fault lies with him as they had reached Talwara due to sleep and the penalty of Rs. 500/- was imposed by the checking party but he was not having the money. He had given the affidavit to the petitioner as he was at fault.

9. PW-3, Naseeb Singh an agriculturist has stated that on 11-12-1994 he was going from Amritsar to Hamirpur Sandoh in HRTC bus No. HP 22-0541. When he boarded the bus, the conductor was sitting on the seat just behind the driver and asked the passengers to get their tickets, who gave the tickets and the bus was started. The conductor was sleeping in the bus as he was not feeling well. The driver of the bus gave medicine to the conductor and when the bus reached at Kartarpur, the conductor was sleeping and the passengers who boarded the bus at Kartarpur were not issued the tickets and the money was not collected by the conductor as fare of the bus. When the bus reached at Budhipur Phatak, the bus was checked by two inspectors and asked the passengers to show their tickets. The passengers having no tickets, were issued tickets by the Inspectors which were taken from the conductor. The conductor had not deliberately or intentionally issued the tickets and during the enquiry, his statement was also recorded, who stated the same version.

10. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW-1 Shri Gurdial Singh has stated that he was in flying squad in 1993 and he knows the petitioner, who was going in bus from Haridwar to Pathankot as conductor and they checked his bus at Talwara at 5.30 AM. They were on special checking on that day. There were 54 ½ passengers in the bus and on inspection, he found that three passengers, who were going from Raja Ka Talab were given the less tickets. All these passengers were caught red handed without tickets from Haridwar to Chandigarh, who issued the ticket from Amb to Chandigarh. All these persons were found travelling without tickets from Amb to Raja ka Bag and thus misappropriated the amount approximately Rs. 318/- from Amb to Raja ka Bag. They collected the tickets from the passengers and sent their report to the R.M Pathankot.

11. RW-2, Shri Amar Nath, R.M HRTC Dharamshala has stated that he was the enquiry officer appointed in this case during 1994, who conducted the enquiry and proved the enquiry report Ex. RW-2/A, who submitted enquiry report to R.M HRTC Chamba. The charge sheet is Ex. RW-2/B. He summoned the witnesses during the enquiry and recorded their statements and S/Shri Karnail Singh and Tarsem Singh were prosecution witnesses. The petitioner has not filed any list of witnesses and defence statement of the petitioner has been taken on record which was considered by him and discussed in the enquiry report and as per enquiry, the charges were proved against the petitioner and the prosecution witness Shri Tarsem Singh produced the unpunched tickets and way bill which were taken on record. The tickets which were on the record are 61 in number and proved the history sheet Ex. RX.

12. The case of the petitioner is that though he was on duty as conductor in HRTC bus at the relevant time and when his bus was checked by the flying squad near Talwara, three passengers were found less tickets and they had the tickets upto Amb, who did not alight at Amb due to sleep and reached near Talwara, who was not at fault as the passengers did not alight at Amb which was their destination due to sleep, who failed to pay the penalty of Rs. 500/- per passenger to the checking inspector and he was taken to task by initiating enquiry against him which was not conducted legally and as such his termination is liable to be quashed.

13. On the contrary, the respondent contends that the petitioner being HRTC conductor at the relevant time was caught red handed while issuing less tickets to three passengers and on enquiry, the petitioner made lame excuses and the enquiry was rightly conducted by the RW-2 Shri Amar Nath, R.M HRTC, Dharamshala and the petitioner was found guilty, who was rightly removed from service w.e.f. 23-7-1997.

14. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

15. After the close scrutiny of the record of the case, it is clear that the petitioner was on duty as conductor HRTC at the relevant time when the bus was checked by RW-1, Chief Inspector, Gurdial Singh, who found three passengers with less tickets and they were brought without tickets from Haridwar to Chandigarh while the tickets were issued to them from Chandigarh to Amb but they had no tickets from Amb to Raja ka Bag and thereby caused the misappropriation of Rs. 318/- of Government fund from Haridwar to Raja ka Bag. It is significant to note that PW-2 Shri Ashok Kumar, one of the passenger has deposed in favour of the petitioner that the affidavit was prepared at Pathankot by him in 1997 when the petitioner disclosed to him that he was involved in a case and as such it is clear that PW-2 is an interested and partisan witness, who sworn an affidavit in favour of petitioner in order to wriggle out the petitioner from the case knowing fully well that he was found without ticket from Amb to Raja ka Talab and as such no reliance can be placed on the testimony of PW-2.

16. Now, turning to the statement of PW-3 Shri Naseeb Singh, who has stated that the conductor was sleeping in the bus at seat no. 4 to 6 as he was not feeling well. It is significant to note that PW-1 has nowhere stated that he was not feeling well on that day at the relevant time and he was sleeping on seat no. 4 to 6 of the bus and as such it is clear that PW-3 had fabricated the false plea in order to justify the non issuance of tickets to three passengers at the relevant time and obviously therefore, it is clear that PW-3 has made a lame excuse of fake sickness of the petitioner without any basis and foundation especially when the petitioner himself has nowhere stated that he was suffering from illness at the relevant time or he was sleeping when the team of HRTC inspectors of flying squad inspected the bus in which the petitioner was the conductor and therefore, keeping in view the statement of PW-3, it can safely be concluded that no reliance can be placed on the testimony of PW-3 being not worthy of credence.

17. Now, advertent to the other aspect to the case, it is significant to note that the petitioner has admitted in the cross examination that he had taken the fare from three passengers who boarded the bus from Chandigarh to Amb and he was the conductor of the bus upto Pathankot. He has further admitted that he engaged Shri Yash pal as his defence assistant to defend his case, who was also HRTC Conductor and he attended all the proceedings before the enquiry officer with his defence assistant and his defence assistant cross examined all the witnesses, whose only grouse is that the enquiry officer did not record the statement of witnesses correctly but it is significant to note that the petitioner did not make any complaint against the enquiry officer at any point of time. The petitioner has admitted that there were 48 cases reported against him from 4-7-1985 to 7-7-1995 and all these cases were of double payment. It is significant to note that the petitioner is matriculate, who signed many papers without going through the contents. The petitioner has further admitted that he does not know that R.M is the appointing/removal authority but he was appointed by Divisional Manager. RW-1 Shri Gurdial Sharma, Chief Inspector, HRTC has stated that he caught three passengers having less tickets from Amb to Raja ka Bag and after verifying the facts, took the tickets from the conductor and also got the signatures of the conductor on the return of the same, who had not recorded the statements of any passenger and the case has been reported against the petitioner on the basis of the statement of the passengers. RW-2 Amar Nath, R.M HRTC has stated that appointing authority of the petitioner is the R.M as mentioned in the R & P Rules and further he recorded the statement of prosecution witnesses and the cash of the petitioner was not checked by the raiding party as it is not compulsory required to check the cash of the conductor. He has further clarified that all three passengers disclosed that they boarded the bus from Haridwar to Raja ka Bag. He has also denied that all these passengers had given the affidavit in favour of the petitioner that they had gone beyond Amb due to sleep. Thus, after the close scrutiny of the enquiry report, it is clear that the petitioner was rightly removed from service after conducting the proper enquiry by the HRTC and the petitioner was afforded full opportunity to defend his case, who was allowed to engage defence assistant of his own choice and the petitioner attended each and every proceedings of the enquiry and signed the enquiry proceedings and cross examined the prosecution witnesses, who also appeared in his defence and therefore, it does not lie in the mouth of the petitioner to say at this juncture that the enquiry was not rightly conducted against him by the enquiry officer in lawful manner especially when there is nothing on record which could show that the enquiry officer had not acted in accordance with law. Since there is serious allegations of embezzlement against the petitioner being the conductor of HRTC bus having not issued tickets to three passengers from Amb to Raja ka Bag and even in the past, there were 48 of such like cases in which he was taken to task by the HRTC and it was also one of the charge fully proved against the petitioner and even the petitioner preferred an appeal before the Divisional Manager, HRTC Shimla which was rejected by him holding that the conductor was involved in 48 cases of ticket less traveling during the span of ten year service, who deserves no sympathy of corporation. Here I am fortified with a view taken by their lordships of Hon'ble Supreme Court incase titled as Divisional Controller, NEKRTC Vs. H. Amarsh as reported in AIR 2006 SC 2730 in which it was held that:

“Where bus conductor was found under the influence of liquor while on duty, who did not issue tickets to the passengers and misappropriated the money of corporation. Charges regarding pilferage proved. Misconduct is of grave nature. Fact that amount pilfered is petty, irrespective. Nothing wrong in corporation loosing faith in such an employee. Setting aside dismissal and directing reinstatement is errenous on grounds of being a misplaced sympathy.”

Thus, having regard to the entire evidence on record, I have no hesitation in coming to the conclusion that the domestic enquiry conducted by the Regional Manager, HRTC, Nahan against shri Pardeep Kumar petitioner and termination of his services w.e.f. 23-7-1997 on the basis of enquiry is proper and justified and as such no interference is called for. Accordingly, point no.1 is decided in favour of the respondent and against the petitioner.

Point No. 2:

18. Since I have held under point no.1 that the services of the petitioner have been rightly dismissed by the respondent, hence the petitioner is not entitled to any relief. Accordingly, point no.2 is decided in favor of the respondent and against the petitioner.

RELIEF

As a sequel to my above discussion and findings on points No. 1 & 2 above, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 15th day of June, 2009 in presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 136 of 2006
Instituted on 16-10-2006
Decided on 15-6-2009

Purshotam Chand S/o Shri Swaran Singh ex Conductor C/o General Secretary, Himshakti Parivahan Nigam
Karamchari Sangh 92/2 Dhingoo Temple road, Near Military Gate, Sanjauli Shimla-6 HP. ...Petitioner.

Versus

1. The Regional Manager, HRTC, Nahan, Distt. Sirmour, HP.
2. The Divisional Manager, HRTC Shimla, Division-4, HP.
3. The Managing Director, HRTC, Shimla-3

...Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri N. S. Chauhan, Ld. Csl.
For respondent : Shri Shashi Shirshoo, Ld. Csl.

AWARD

1. Initially the joint reference of Purshotam Chand and Pardeep Kumar was sent to this court for adjudication but my Ld. Predecessor raised the objection that the separate references should have been sent as the services of both these conductors were terminated on 23-7-1997 and 20-6-1998 and the HRTC has taken the disciplinary action against both the conductors separately and even their services were also terminated on different dates and on the direction of my Ld. Predecessor, the reference was sent to the Labour Commissioner, who in compliance of the direction, sent two separate references of Purshotam Chand and Pardeep Kumar which are registered as reference No. 136/06 and 135/06. It may not out of place to mention here that when the direction was passed, the evidence of the petitioner was already recorded. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the domestic enquiry conducted by the Regional Manager HRTC, Nahan, District Sirmour, HP against Shri Purshotam Chand S/o Shri Swaran Singh ex conductor and termination of his services w.e.f. 20.6.1998 on the basis of enquiry is proper and justified? If not, what relief of service benefits, back wages and seniority above workman is entitled to?”

2. The petitioner has filed a separate claim asserting therein that the Himachal Road Transport Corporation is an industry and he is a workman and the petitioner has raised the dispute to the Regional Manager, HRTC Nahan Unit under the provisions of the Industrial disputes Act, 1947 and that the petitioner was appointed as daily wages conductor by Divisional Manager Shimla vide office order dated 29.4.1989 and the petitioner was appointed at Tapri unit w.e.f. 1-9-1989 by the Assistant Manager, H.R.T.C. Tapri Unit and that the petitioner was appointed as Conductor on regular basis after completion of period of one month of daily wages service w.e.f. 1-9-1989 vide order dated 6-10-1989 in the pay scale of 950-1800 and that while the petitioner on the roll with the R.M. HRTC, Nahan during the year, 1987, issued a show cause notice to the petitioner with the remarks that the petitioner is not a fit person to be retained in service and proposed to impose the penalty of removal from service against the enquiry report into the charges levelled against him vide charge sheet dated 21-4-1995 under Rule 14 C.C.S (C.C.& A) Rules, 1965 and the enquiry report submitted by the R.M., Shimla-3 who was appointed as an enquiry officer in the case and that the petitioner has submitted his reply against the show cause notice to R.M. HRTC, Nahan vide application dated

7-2-1998, the petitioner was appointed by the Divisional Manager, who is the appointing authority of the petitioner, but he was removed from service by the Regional Manager, HRTC, Nahan Unit, who was not a competent disciplinary authority for major penalty in the case, hence the termination order is illegal and against the principle of natural justice and that the chargesheet dated 21-4-1995 issued to the petitioner by the R.M. HRTC, Hamirpur, Unit, while he was on the roll with the R.M. HRTC Hamirpur during the year, 1995 and while the petitioner was on duty with bus No. HP. 22-0541, catering as Amritsar to Hamirpur Sandhol Bus service, the petitioner, was feeling unwell since last night, who was doing his duty reluctantly, who was in high fever and having also loose motion and fell sleep at seat No. 4 to 6 in the bus and the bus was checked by S/Sh. Hari Dutt Sharma, Chief Inspector, Suresh Chander, Inspector of Flying Squad at Jalandhar bye-pass on 11-12-1994 and there were 72 passengers and 80 Kgs Load in the bus at the time of checking and the Inspectors identified and detected 24 passengers without tickets from different stations to Jalandhar amounting to Rs. 250/- at the time of checking and the checking report was submitted to the office and the conductor was placed under suspension and the report against the petitioner was without written statement and without proper evidence upon which the petitioner was chargesheeted under Rule 14 of C.C.S. and (C.C.A) Rules, 1965 and the case was entrusted to the enquiry officer who submitted his enquiry report after completion of a period of three years in 1998, which is against the rules as well as the enquiry process and that the petitioner defended his case before the enquiry through his defence assistant from time to time and the enquiry officer had examined prosecution evidence along with simple checking report in support of charges but there was no written statement of passengers and documentary evidence in support of the report and that the petitioner had also produced defence witness Sh. Naseeb Singh before the enquiry and that while the petitioner was on his duty on HRTC, Nahan Unit, the Regional Manager, had issued a show cause notice to the petitioner on 24-1-1998 and there were two office orders issued to the workman on the same day, which were replied by the petitioner but the same was rejected and imposed the penalty of removal from service upon the petitioner w.e.f. 20-6-1998 which was illegal and also very bad decision against the workman. The petitioner preferred an appeal against the removal order on 23-7-1998, before the Divisional Manager, Shimla, which was rejected without merits, vide order dated 24-10-1998. The enquiry conducted by the enquiry officer is unfair and improper in the matter as the penalty of removal from service imposed by the management on the petitioner is disproportionate to the offence, hence the termination is wrong and illegal which is against the principle of natural justice and as such, prayed that the removal order dated 20-6-1998 issued by the Regional Manager, HRTC, Nahan be quashed immediately as the enquiry is unfair, illegal and improper and also to order for reinstatement into service from the date of termination with full back wages, service seniority and other benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner and filed reply inter alia raising preliminary objections of maintainability, the claim not filed by authorized agent as the petitioner is not a member of Himachal Parivahan Nigam Karmchari Sangh. On merits, it is contended that the petitioner was on the roll of HRTC Hamirpur Unit during December, 1994 and on 11-12-1994, petitioner was detected carrying 24 passengers without tickets in bus No. HP.22-0541 involving an amount of Rs. 250/- which was collected by him and in this case, the petitioner was placed under suspension, who was charge sheeted under Rule 14 of the C.C.S. (C.C. & A) Rules, 1965 vide Memo. dated 21-4-1995 by the Regional Manager, HRTC Hamirpur and the case was sent for enquiry to Regional Manager, HRTC Shimla-3 by the Regional Manager, Hamirpur vide order dated 19.6.1995 and the petitioner was transferred under suspension from Hamirpur to Shimla during 11/96, who was reinstated at local Unit Shimla w.e.f. 13-11-1996, who was removed from service w.e.f. 27-3-1997 by the R.M. HRTC, Shimla in another case, who was ordered to be reinstated by the Divisional Manager, HRTC, Shimla-4 vide order dated 12-11-1997, who was posted at Nahan Unit, who joined duty at Nahan on 24-11-1997. The enquiry officer, Headquarters completed the enquiry in respect of the chargesheet dated 21-4-1995 and submitted his report in which the charges stood proved against the petitioner and show cause notice for removal from service was issued to the petitioner by the then Regional Manager, HRTC Nahan, vide order dated 24-1-1998 and that the petitioner submitted his reply dated 7-2-1998 to the show cause notice, which was considered by the then Regional Manager, HRTC Nahan and keeping in view the seriousness of the case, the penalty of removal from service was imposed upon the petitioner vide order dated 20-6-1998. It is denied that the Divisional Manager, was the appointing authority of the petitioner, who was appointed by the Assistant Manager, HRTC Tapri, and was removed by Regional Manager, who is higher in rank from his appointing authority and Regional Manager is fully competent to impose major penalty upon him as per schedule of delegation of powers and that during the course of enquiry prosecution as well as defence witnesses were examined by the enquiry officer and that the petitioner produced a defence witness Sh. Naseeb Singh during the enquiry and after the enquiry the charges were proved against the petitioner who was removed from service on 24-1-1998 against which the petitioner preferred an appeal before Divisional Manager, HRTC Shimla, which was rejected by the Divisional Manager, HRTC Shimla-4 being without merits, vide order dated 24-10-1998. The enquiry officer conducted the enquiry properly and furnished his report after taking into consideration all the facts of the case and the penalty imposed by the disciplinary authority i.e. removal from the service is fully commensurate with the offence committed by the petitioner and as such, prayed for the dismissal of the claim petition.

4. No rejoinder filed by the petitioner. It may be submitted here that no issues were framed by my Ld. Predecessor as issues were already framed on the joint reference but keeping in view the pleadings of the parties, the following points arise for determination in this case are:

1. Whether the domestic enquiry conducted by the Regional Manger, HRTC, Nahan, Distt. Sirmour, HP against Shri Purshotam Chand petitioner and termination of his services w.e.f. 20-6-1998 on the basis of enquiry is improper and unjustified as alleged?
 2. If point No. 1 is proved, to what relief of service benefits, back wages and seniority, the petitioner is entitled to?
 3. Relief.
5. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.
6. For the reasons to be recorded hereinafter while discussing the points for determination, my findings on the aforesaid points are as under:—
- | | |
|--------------|---|
| Point No. 1: | Yes. |
| Point No. 2: | Entitled to reinstatement but without seniority, continuity and back wages. |
| Relief: | Reference answered in affirmative per operative part of award. |

REASONS FOR FINDINGS

Point No. 1:

7. Coming to this point, the petitioner has examined himself as PW.1, who has stated that he was engaged by the respondent as conductor on daily wages basis w.e.f. 31-7-1989 whose services were regularized by the respondent w.e.f. 1-9-1989 whose appointing authority was Divisional Manager, HRTC, who was deputed with bus No. HP. 22.0541 from Amritsar to Hamirpur and when the bus started from Amritsar, he issued the tickets to all the passengers, who boarded the bus at Amritsar and he told the driver of the bus that he was not feeling well and was not in a position to issue further tickets and slept on the bus seat and then the driver of the bus gave him the medicine and he again slept on the bus seat and the passengers who boarded the bus at Amritsar were to get down on the way and when the driver stopped the bus, some passengers also boarded the bus but due to illness, he could not issue the tickets. He got checked himself from a private doctor at Amritsar and then at Jalandhar, copies of his prescription slips are Ex. P-1 and P-2 and thereafter, the bus was checked by the Flying Squad at a place Budhipur Phatak and as per inspection of the Flying Squad, 24 passengers were found without tickets and he was told by the flying squad that even if he was sick made the tickets of these 24 passengers but the flying squad snatched the tickets from him and torn out the fare of 24 passengers from the tickets, which amount has not been collected from the passengers who boarded the bus. A case was made against him for this act and after the enquiry, his services were terminated by the respondent on 20-6-1998 but proper enquiry was not conducted by the respondent management as no statements of the passengers were taken nor the statement of the driver was taken. He appeared before the enquiry officer and tendered his evidence along with medical certificate which was not considered by the enquiry officer and after his termination, he preferred an appeal before the Divisional Manager, Shimla which was rejected on 24-10-1998 whose services were terminated by Regional Manager, HRTC Nahan, whereas his appointing and disciplinary authority was Divisional Manager. His appointment letters are Ex. P-3 and Ex. P-4 and as such prayed for reinstatement with full back wages and seniority as proper enquiry has not been conducted by the respondent.

8. To rebut the case of the petitioner, the respondents have examined two RWs in all. RW-1 Shri Chaman Lal, Rtd. Deputy D.A. HRTC Nahan has stated that after the receipt of enquiry against the petitioner, Sh. O. P. Bhardwaj, issued the show cause notice Ex. RA, and after the receipt of representation which was considered, the petitioner was removed from service vide order dated 20-6-1998. The representation of the petitioner was rejected by the Regional Manager vide office order dated 24-10-1998 Ex. RB and his representation was also rejected by the Managing Director and proved the enquiry report Ex. RD. The case against the petitioner was of embezzlement of the government money amounting to Rs. 250/- and the history sheet of the petitioner showing the various penalty imposed upon him is Ex. RE.

9. RW-2, Shri Jaswant Singh, Junior Assistant, HRTC Nahan has proved the charge sheet and office order dated 21-4-1995 Ex. RW.2/A and Ex. RW.2/B, who has also stated that during the checking of the bus, 41 tickets of different nominations amounting to Rs. 250/- were taken in possession. The bus tickets amounting to Rs. 35/- were wrongly punched and remaining tickets were unpunched and the details of the tickets are already given in charge sheet and original tickets are on the personal file of the petitioner and the petitioner was appointed by the Assistant Manager, Tapri on 1-9-1989. The appointment letter is Ex. RW.2/C. The petitioner was removed by Regional Manager, who is superior then Assistant Manager.

10. Shri Narveer Singh Chauhan, Ld. Counsel for the petitioner has vehemently argued at the very outset that the petitioner was illegally terminated from service by the respondent without giving him opportunity to defend himself and even no statements of the ticketless passengers were recorded by the respondent during the enquiry nor the enquiry officer appeared into the witness box to prove the allegations against the petitioner.

11. On the other hand, Shri Shashi Shirshoo, Ld. Counsel for the respondent has controverted the arguments of Shri Chauhan and has submitted that since 24 passengers were found without tickets when the petitioner was the conductor of the bus at the relevant time and the bus was checked at Jalandhar Bye Pass by the Flying Squad of HRTC Inspectors and therefore it does not lie in the mouth of the petitioner to say that he was at fault nor the enquiry was conducted legally and properly against him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that though respondent tried to prove on record that the proper enquiry was conducted against the petitioner and after conducting due enquiry against the petitioner, the charges were proved against the petitioner, who was found at fault and major penalty of removal was imposed upon him but it is significant to note that neither the enquiry officer nor the ticketless passengers and above all the HRTC Driver and the HRTC inspectors of the flying squad, who checked the bus at the relevant time were not examined by the respondent, who were the best persons to throw light on the true version of the incident and the relevant record not made available to the court by the HRTC, the adverse influence is liable to be drawn on the non production of relevant record and moreover no procedure followed before passing the order of the removal. Here I am fortified with a case titled as Narottam Prasad Gautam Vs. State of UP and others as reported in 2001 (4) SLR 619 in which it was held that:

“Where the termination of services on the basis of alleged misconduct-relevant record not made available to the court, adverse influence drawn on the non production of relevant record. No procedure followed before passing the order of termination.”

14. Moreover, it is not understandable as to how the enquiry officer came to the conclusion that the petitioner conductor was at fault while not issuing tickets to 24 passengers travelling in HRTC bus HP 22-0541 at Jalandhar Bye Pass especially when he did not examine the bus driver, the ticketless passengers found in that HRTC bus. I find force in the contention of Ld. counsel for respondent that Had the Enquiry Officer and other HRTC officials been examined by the respondent in its evidence, he could have demonstrated that they are not the reliable witnesses. Thus, having regard to entire evidence on record, I am of the firm opinion that the respondent has miserably failed to prove on record that how the petitioner was at fault especially when no ticketless passengers were examined by the enquiry officer nor the enquiry officer stepped into the witness box in order to prove charge against the petitioner. On the other hand, the petitioner has proved on record that he was condemned unheard without affording an opportunity of being heard and deprived him from the principles of natural justice.

15. Thus, having regard to entire evidence on record, I hold that the domestic enquiry conducted by the RM HRTC Nahan against the petitioner an ex conductor and termination of his service w.e.f 20-6-1998 on the basis of enquiry is improper and unjustified. Accordingly, this point is decided in favour of petitioner and against the respondent.

Point No. 2:

16. Since I have held under point No.1 above, that the enquiry held against the petitioner and the termination of his services w.e.f. 20-6-1998 on the basis of enquiry is improper and unjustified, hence the petitioner is ordered to be reinstated in service forthwith but without seniority, continuity in service and back wages keeping in view the previous penalty imposed upon him several times from time to time and the fact that the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, this point is partly decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on point no.1 & 2 the claim of the succeeds and is hereby allowed partly and as such the petitioner is ordered to be reinstated in service forthwith but without seniority, continuity in service and back wages keeping in view the previous penalty imposed upon him several times from time to time by the respondent and the fact that the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 15th June, 2009 in presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 232 of 2003
Instituted on 4-9-2003
Decided on 22-6-2009

Chandan Thakur, s/o Shri Laxmi Singh R/o Village Shari P.O & Tehsil Jubbal, District Shimla, HP.

...Petitioner.

Vs.

The Assistant Commissioner-cum-Block Development Officer Jubbal, Tehsil Jubbal, District Shimla, HP.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri O.P. Chauhan, Ld. Csl.

For respondent : Shri Vikas Dhaulta, Ld. ADA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :—

“Whether the retrenchment of services of Shri Chandan Thakur, daily wages driver by the Assistant Commissioner-cum Block Development Officer, Jubbal District Shimla w.e.f. 22-2-2002 by paying one month salary alongwith notice is proper and justified? If not, what relief of service benefits,, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was employed with the respondent as driver in Feb. 2000 @ of Rs. 70 and Rs. 75/- per day at the time of retrenchment and that the petitioner was duly selected through a test and interview conducted by the selection committee headed by the respondent and duly sponsored by the Employment Exchange Jubbal in May, 2000, who completed 240 days in every year till his retrenchment and that the petitioner was served with a notice of retrenchment on 22-2-2002 effecting the retrenchment on the petitioner with immediate effect without paying the compensation as per law which is violative of section 25-F of the Industrial disputes Act and is illegal, unjust and void-ab-initio and that the impugned termination could not be sustained in the eyes of law as the services of the petitioner have been dispensed with without affording any opportunity to the petitioner and that the termination order has been resorted to in an arbitrary and malafide manner without complying with the mandatory requirements of law and as such prayed for reinstatement with all consequential benefits by quashing the retrenchment notice, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner was employed with the respondent as daily waged driver in the year 2000 @ Rs. 70/- per day on the termination of services of Shri Beli Ram daily rated driver were terminated vide office order dated 2-2-2000 for different allegation during govt. duty and that the petitioner applied for the post of driver on a simple application and no test/interview was conducted nor was sponsored through employment exchange and that in compliance of the orders of Administrative Tribunal, the services of previous driver Beli Ram was reengaged and notice of retrenchment was served upon the petitioner. It is contended that as per the law one month notice alongwith one month salary was given to the petitioner and that there is no post as such in which the petitioner can be adjusted and that the services of the petitioner were terminated as per the provisions of Industrial disputes Act, 1947 and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this court on 25-11-2005 on the pleadings of the parties.

1. Whether the retrenchment of the petitioner w.e.f. 22-2-2002 is illegal and is in violation of I.D Act, 1947? If so, its effect?
...OPP.

2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to?
...OPP.
3. Whether the petition in the present form is not maintainable?
...OPR.
4. Relief.

5. I have heard the Ld. Counsel for the petitioner and Ld. ADA for respondent and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	Not entitled to any relief.
Issue No. 3	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was employed as driver by the respondent w.e.f. Feb. 2000 @ Rs. 70/- per day and his name was duly sponsored by the sub Office Employment Exchange Jubbal and Selection Committee was duly constituted and headed by the BDO Jubbal, who conducted his interview/technical test and he was finally selected. He continuously served with the respondent upto 22-2-2000 when he was served with the retrenchment notice Ex. PW1/A in which the ground of his retrenchment was made the judgment of Administrative Tribunal PW1/B in which he was not the party nor his appointment was subject to out come of any court matter. He was not paid the retrenchment compensation as per law and he had completed more than 240 continuous service during each calendar year. The respondent while issuing retrenchment notice Ex. PW1/A did not give an opportunity to file the reply and the respondent terminated his services arbitrarily, who made several requests for his reengagement to all but in vain and as such prayed for reinstatement in service alongwith all consequential benefits including back wages, seniority and continuity in service.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Man Singh Gulshan, Supdt. BDO Office Pacchad, who has stated that the petitioner was working as driver prior to his joining, who was engaged on daily wages on the basis of the application Ex. RB, who was engaged as their driver Beli Ram was removed for certain reasons and they received the direction from Administrative Tribunal for his reengagement and in compliance of that order, Beli Ram was reengaged. There was no vacancy of driver lying in their office and they sought the opinion from the Director to remove the petitioner after giving him the benefits of section 25-F of the Industrial disputes Act, 1947 and proved the copy Ex. RC and they have also given one month pay as per Ex. RA and the petitioner never raised any objection when the payment in lieu of notice was given to him.

9. The case of the petitioner is that he being the daily wages driver was appointed by the respondent after conducting his interview whose appointment was not based subject to any court order, who had completed 240 working days in each and every calendar year preceding his termination, who was illegally removed from service and as such is entitled for his reinstatement.

10. On the contrary, the respondent contends that the services of the petitioner were terminated after giving him notice alongwith compensation under section 25-F of the Industrial disputes Act, 1947, hence the petitioner is not entitled to any relief claimed by him.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged on daily wages by the respondent when the previous driver Shri Beli Ram of respondent was removed from service, who approached the Administrative Tribunal HP for quashing of his termination and his case was allowed and the Administrative Tribunal vide order Ex. PW-1/B in O.A-419/2000 dated 2nd November, 2001 allowed Original Application and quashed the termination order of Shri Beli Ram the previous driver of the respondent department. It is borne out from the record that the respondent in compliance of the order of Administrative Tribunal HP reinstated the services of Shri Beli Ram, the previous driver of the respondent and the services of the petitioner were terminated by giving him one month notice and also paid a compensation of one month salary of Rs. 2200/- as is evident from the

receipt of compensation Ex. RA and notice Ex. RC. It is also proved on record that there is no other vacancy of driver with the respondent in which the petitioner can be adjusted and obviously therefore, the respondent had no alternative but to retrench the services of the petitioner by giving him one month notice alongwith compensation of one month salary. I find nothing wrong with the procedure adopted by the respondent vide notice Ex. RC and payment of compensation vide receipt Ex. RA. There is nothing on record which could show that the respondent has not complied with the mandatory provision of law as envisaged under section 25F of the Industrial Disputes Act, 1947 and there is nothing on record which could show that the junior to the petitioner is still working with the respondent. In view of no such evidence on record, it can safely be concluded that the services of the petitioner were retrenched by the respondent after serving mandatory notice of one month Ex. RC and after payment of one month salary in lieu thereof vide receipt Ex. RA and as such the retrenchment of petitioner w.e.f. 22-2-2002 is legal, valid and proper and also in compliance of the provisions of section 25F of the Industrial disputes Act, 1947. Accordingly, the issue is decided in favour of petitioner and against the respondent.

Issue No. 2:

13. Since, I have held under issue no.1 above, that the services of the petitioner has been legally dispensed with by the respondent after serving valid notice of one month and after making payment of compensation of Rs. 2200/- being one months salary in compliance of the provisions of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any service benefits as claimed by him. Accordingly, the issue no.2 is answered in negative.

Issue No. 3:

14. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

RELIEF

As a sequel to above discussion and findings on issue No. 1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 22nd June, 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 18 of 2007
Instituted on 16-3-2007
Decided on 30-6-2009

Nasib Singh S/o Shri Lal Singh R/o Village & P.O Dharampur, Tehsil Sarkaghat, District Mandi, HP.
...Petitioner.

Vs.

The Executive Engineer, HPPWD Medical College Division, Shimla-3, HP. *...Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri P.P. Chauhan, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :—

“Whether the termination of services of Shri Nasib Singh S/o Shri Lal Singh workman by the Executive Engineer, HPPWD, Medical College Division, Shimla-3, HP w.e.f. 10-11-2001 after giving

retrenchment notice whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?"

2. The petitioner has filed a statement of claim asserting therein that he was initially engaged as mortar mate @ Rs. 65 per day in May, 1999 by the respondent department, who was terminated on 20-8-2001 and the petitioner worked for 229 days in 1999, 362 days in 2000 and 273 days in 2001 which is more than 240 days in preceding twelve calendar months before illegal termination whereas similar situated persons S/Sh. Jai Ram, Nem Chand, Sandeep Kumar, Amar Singh, Vijay Kumar, Kishan Chand, Murli Singh, Raj, Kapoor Singh, Satinder Singh, Kishan Chand and Meera Devi have been retained under different designations which is against the provisions of I.D. Act, 1947 and that the petitioner approached Administrative Tribunal against his termination which was dismissed on the ground of jurisdiction and that the petitioner was discharging his duties with the best of his abilities and to the entire satisfaction of his superiors, who had completed more than 240 days in every calendar year, hence the termination order is against the mandatory and statutory provisions of section 25F, 25N, 25G and 25H of the I. D. Act, 1947 and as such prayed for reinstatement in service alongwith all consequential benefits of back wages @ 18% interest, seniority, continuity, regularization, promotion, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections of maintainability and that the retrenchment of the petitioner and others was necessitated after the completion of work. On merits, it is contended that the petitioner alongwith others was retrenched after making the compliance of mandatory provisions of section 25F of the I.D Act, 1947 as the notice was issued on 3-10-2001 indicating the reason that the petitioner had completed 240 days in each calendar year and that number of construction works which are being executed by respondent are on contract basis and some of the work has been completed which are handed over to the respective departments. It is also contended that due to completion of works and non availability of funds, the government has closed two sub divisions and merged with sub division no. II and that the services of the petitioner had to be discontinued after making the compliance of section 25F of the Act, 1947 and that the petitioner was informed to collect the compensation at any time during the office hours and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 16-11-2007 on the pleadings of the parties.

1. Whether the service of the petitioner has been retrenched w.e.f. 10-11-2001 after giving notice whereas eh junior employees are retained? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the present reference is not maintainable? ...OPR.
4. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under :

Issue No. 1	Yes but without legal notice and without payment of compensation.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

8. Coming to this issue, the petitioner has examined himself as PW-1, who tendered his affidavit Ex. PA averring therein that he was engaged by the respondent as mortar mate @ s. 65 per day on May, 1999, who had completed 240 days in each calendar year, who was terminated on 20-8-2001 by giving him a notice under section 25F of the Industrial disputes Act. No compensation was paid to him, who was entitled for a notice under section 25N as the respondent is an industrial establishment and his juniors S/Shri S/Sh. Sandeep Kumar, Vijay Kumar, Kapoor Singh, Parveen Kumar, Vishal and Pushpa are still continuing with the respondent, whose services have been regularized by the respondent hence prayed for reinstatement with full back wages alongwith interest @ 18%.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Deepak Raj Chauhan, who has stated that he is posted as an Assistant Engineer with the IGMSC Sub Division, Shimla since April, 2008 and is well conversant with the facts of the case. The petitioner was engaged as mortar mate on daily wages on 2-5-1999, who continued as such till 30-9-2001 and proved the mandays chart Ex. RA. There were three Sub Divisions with Medical Division of which two were subsequently merged with Sub Division No. 2 after completion of work and due to paucity of funds vide notification Ex. RB. The construction work of Medical Division were being executed by the private contractors on contract basis under the supervision of the department and on completion, the building was handed over to the concerned department and after the completion of the work, the services of the petitioner was disengaged for want of work vide notice Ex. RC alongwith one month compensation which was duly received by the petitioner but no compensation was received by the petitioner and no junior to the petitioner was engaged by the respondent.

10. The case of the petitioner is that he being the daily wages mortar mate having worked for more than 240 working days is entitled to be reinstated in service as no valid and legal notice was served upon the petitioner nor compensation was paid to him by the respondent.

11. On the contrary, the respondent contends that the petitioner was engaged against specific work and for specific period whose services have been terminated after completion of work and even retrenchment notice under section 25F was duly served upon the petitioner, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that notice under section 25F Ex. RC was sent to the petitioner but there is nothing on record which could show that it was duly served upon the petitioner. It is significant to note that no compensation in lieu of notice was paid to the petitioner by the respondent till to date. What to speak of payment of compensation to the petitioner, the respondent even did not calculate the quantum of compensation to be paid to the petitioner by the respondent and as such it is clear that no legal and valid notice was served upon the petitioner by the respondent nor compensation was paid to the petitioner at the time of his retrenchment.

14. Now, turning to the legal aspect of the case, the respondent was required to serve the petitioner with three months notice in writing as required under section 25N of the Industrial Disputes Act, 1947 having more than hundred workmen in their establishment as such mandatory notice for three months was required to be served upon the petitioner which was never served upon the petitioner by the respondent for the reasons best known to it. Moreover, Section 25N of the I.D Act, 1947 provides:

SECTION 25N : CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMAN.

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:

- (a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
- (b) the prior permission of the appropriate government or such authority as may be specified by that government by notification in the official gazette (herein after in this section referred to as the specified authority) has been obtained on an application made in this behalf.*

(2) An application for permission under sub section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under sub section (1) has been made, the appropriate government or the specified authority, after making such enquiry as it things fit and after giving the reasonable opportunity of being heard to the employer, the workman concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of reason stated by the employer, the interest of the workman and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workman.

Here, I am fortified with a view taken by the Hon'ble Supreme Court incase titled as Uttranchal Forests Development Corporation & Anr Vs. Jabar Singh & Ors. as reported in 2007-II-LLJ 95 in which it was held that :

“Retrenchment notice in question not complying with two conditions of section 25-N namely giving three months notice to workmen in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages”

In the instant case, the respondent has not complied with the mandatory provisions of section 25N of the Industrial Disputes Act, 1947 nor paid the compensation to the petitioner at the time of his termination from service and as such the termination of the petitioner w.e.f. 10-11-2001 is held illegal, improper and unjustified. Moreover, the petitioner could not prove on record that his juniors are still continuing with the respondent department especially when the two medical sub divisions of HPPWD have been merged with division no. II nor the record has been summoned from the office of the respondent to prove that the juniors to petitioner are still working with the respondent department. Therefore, having regard to the entire evidence on record and in view of the fact that the termination of the petitioner for want of proper notice under section 25N and no compensation in lieu of three months notice has been paid to the petitioner by the respondent at the time of his termination and obviously therefore, this issue is decided in favour of petitioner and against the respondent holding that the services of the petitioner has been retrenched w.e.f. 10-11-2001 without giving valid and legal notice is improper, illegal and unjustified.

Issue No. 2 :

15. Since I have held under issue no. 1 above, the services of petitioner have been illegally terminated by the respondent without serving proper notice under section 25N of the Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue No. 2 is decided in favour of the petitioner and against the respondent.

Issue No. 3:

16. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this reference which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on Issue No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed as a result of which retrenchment notice under section 25F of the Industrial Disputes Act, 1947 issued by the respondent is hereby quashed and set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of June, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 92 of 2005
Instituted on: 2-12-2005
Decided on: 16-6-2009

Lachi Ram Deceased through his LR's Smt. Rameshwari Devi (Widow), Shri Jai Ram (Son), Shri Ram Lal (Son), Jagdish Chand (Son) Krishan Chand (Son) Smt. Dwarku Devi (Mother) R/o Village Mangu, P.O Mangu mandap Tehsil Arki, District, Solan, HP. *..Petitioner LR's.*

Versus.

1. The Executive Engineer, HPPWD Division, Arki, district Solan, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Ld. Csl.
For respondent : Shri jagdish kanwar, Ld. DDA.

AWARD

1. Initially the petitioner Shri Lachi Ram raised the Industrial Dispute and the reference was sent to this court for adjudication but he died during the pendency of this case and consequently his LR's are ordered to be brought on record. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of services of Shri Lachhi Ram S/o Shri Attru Ram workman by the Executive Engineer, HPPWD Division Arki District Solan, HP w.e.f. December, 2004 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The original petitioner has filed a separate claim asserting therein that he was initially appointed as daily wages beldar in the year, January, 1994 with the respondent and that after his appointment, he worked at his place of posting till December, 1994 and then, he was terminated from service without assigning any reason, who had completed 240 days in a calendar year and the action of the respondent is totally against the settled position of law whose services were terminated without complying with the provisions of Section 25F, 25G and 25H of the Industrial Disputes Act, 1947 and that the respondent has engaged many fresh persons into the job and even juniors to him S/Sh. Heeru Ram, Kam Raj, Jagdish, Raju Ram, Lekh Ram and Dilu Ram were engaged after the termination of the petitioner and that the respondent has not issued any notice of termination nor paid retrenchment compensation to the petitioner, which is in violation of mandatory provisions of law and that the respondent is required to maintain the seniority of workmen and to offer employment, but the respondent failed to discharge their duties and as such, prayed for reinstatement in service with retrospective effect along with all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner was engaged as daily wages beldar in the department in November, 1993 and that the petitioner worked under respondent in the calendar year of 1993 for 55 days. It is denied that the petitioner worked for 198 days in 1994 and then the petitioner left the work of his own and as such, the action of the respondent is not illegal as the petitioner left the job of his own and that some persons who were engaged along with the petitioner in the year, 1994 and 1995 are still working with the respondent by completing 240 days in each calendar year and that the petitioner left the job of his own, hence the question of complying with the provisions of Sections 25F, 25G and 25H does not arise at all and as such, prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 2-8-2006, on the pleadings of the parties:—

1. Whether the service of the petitioner has been illegally terminated without complying the provisions of the I.D. Act? If so, its effect? ..OPP
2. If issue No.1 is proved in affirmative, to what relief the petitioner is entitled to? ..OPP
3. Whether the petitioner has abandoned the job at his own as alleged? ..OPR
4. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

- Issue No. 1: Yes.
- Issue No. 2: LR of the original petitioner Shri Lachi Ram, his son Ram Lal is ordered to be given service forthwith against the reinstatement of his father without back wages and seniority.
- Issue No. 3: No.
- Relief: Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1 :

8. In support of this issue, the petitioner has examined himself as PW.1, who has stated that he was engaged by respondent in 1993, who had worked till December, 1994 for more than 240 days in the preceding year and proved the mandays chart Ex. PA and the respondent has engaged S/Sh. Heeru Ram, Jagdish, Raju, Lekh Ram and Dila Ram after his removal as per detail Ex. PB, who was wrongly removed from the service and prayed for reinstatement with seniority and back wages. No notice nor compensation was paid to him.

9. To rebut the case of the petitioner, the respondent has examined Engineer Satish Kumar, J.E. Sub Division Darlaghat, who has stated that the petitioner was engaged as beldar during November, 1993, who left the job in August, 1994 and the petitioner has completed 240 days work during his stay as per Ex. PA and according to chart, the petitioner worked for 55 days in 1993 and 198 days in 1994.

10. Shri J. R. Sharma, Ld. Counsel for the deceased petitioner has vehemently argued at the very outset that though the original petitioner has not completed 240 working days in twelve calendar months preceding his termination and even juniors to the deceased petitioner are still working with the respondent department and though the petitioner is no more but his LR's are already brought on record and even all the LR's *vide* their affidavit dated 15-10-2008 have no objection, if the services be given to the Shri Ram Lal son of original petitioner Lachi Ram and as such he has argued that Shri Ram Lal S/o deceased Lachi Ram original petitioner is entitled to be given job against his father on compassionate ground.

11. On the contrary, Sh. Vikas Dhaulta, Ld. ADA for respondent has controverted the arguments of Sh. Sharma and has submitted that there is nothing on record which could show that the original petitioner Lachi Ram has completed 240 working days in twelve calendar months preceding his termination and even there is nothing on record which could show that the juniors to the deceased petitioner are still continuing with the respondent department and as such the LR's of the deceased petitioner are not entitled to any relief as claimed by them.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that Shri Lachi Ram deceased was alive when he was examined on oath on 17-11-2006 who has categorically stated that the respondent engaged S/Shri Heeru Ram, Jagdish, Raju, Lekh Ram and Dila Ram after his removal as per detail chart Ex. PB. It is significant to note that fatal suggestion was given to the petitioner that above named persons are juniors to him and are still working. No doubt, that the deceased petitioner has failed to bring on record that he has completed 240 working days in twelve calendar months preceding his termination but the petitioner has brought on record that S/Shri Heeru Ram, Jagdish, Raju, Lekh Ram and Dila Ram are still working with the respondent and as such the case of the petitioner squarely falls under section 25G & 25H of the Industrial Disputes Act, 1947 and since it is proved on record that the persons junior to the petitioner are still continuing and thus there is breach of section 25G & 25H of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of *Hon'ble Supreme Court incase titled as State of Haryana Vs. Dilbag Singh reported in 2007 LLR 72 SC* in which it was held that :

"Where Labour found that person junior to respondent was still working and thus there was breach of section 25-G & 25-H of the Act. Court directed reinstatement with 50% back wages."

Similarly our own Hon'ble High Court of HP has held incase titled as *State of HP & Others V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903*, in which it was held that :—

"Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act."

Thus, having regard to entire evidence on record and in view of the fact that the juniors to the petitioner are still working with the respondent and obviously therefore, I have no hesitation in coming to the conclusion that the juniors to deceased petitioner S/Shri Heeru Ram, Jagdish, Raju, Lekh Ram and Dila Ram are working with the respondent and as such the termination of services of deceased petitioner by the respondent *w. e. f.* December, 2004 without complying with the provisions of I.D Act, 1947 is improper and unjustified as the respondent has violated the principle of first come last go and also violated the provisions of sections 25G & 25H of the Industrial disputes Act, 1947. Accordingly issue no.1 is decided in favour of petitioner and against the respondent.

Issue No. 2 :

14. Since, I have held under issue No.1 above, that the services of the deceased petitioner Sh. Lachhi Ram, were wrongly and illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947, hence the LR of the petitioner namely Sh. Ram Lal (son of the deceased petitioner) is ordered to be given service forthwith being new appointee against the reinstatement of his father without seniority, continuity and back wages. Accordingly, issue No. 2 is decided in favour of the deceased petitioner and against the respondent.

Issue No. 3 :

15. Since I have held under issue no. 1 above that the services of the deceased petitioner were terminated by the respondent and since the respondent has failed to prove on record that the deceased petitioner had himself abandoned his job, hence I find no force in this contention as it was held incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, on the strength of this ruling and having regard to the fact that no evidence to prove the abandonment was led by the respondent, hence it can safely be concluded that the deceased petitioner had not abandoned the job of his own. Accordingly, issue No.3 is decided in favour of the deceased petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue No. 1 to 3 the claim of the deceased petitioner Shri Lachi Ram succeeds and is hereby allowed and as such Shri Ram Lal son of original petitioner Shri Lachi Ram is ordered to be given the service forthwith against the job of his father from the date of passing of this award *i.e* 16-6-2009 without seniority, continuity and back wages being fresh appointee. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 16th day of June, 2009 in presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Ref No. 366 of 2002.
Instituted on. 25-11-2002
Decided on. 22-6-2009.

Ajay Kumar Awasthi s/o Shri Shambhu Ram through Shri Ravinder Kumar Dhiman, R/o Village Ghodav Dhauladhar Colony, Nagrota Bagwaan, District Kangra, HP. ..Petitioner.

Vs.

Anil Sikand, Managing Partner, M/s Sikand & Company, Chambaghat, District, Solan, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri C.M Chandel, Ld. Csl.
For respondent : Shri Harsh Khanna, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

“Whether the termination of the services of Ajay Kumar Awasthi s/o Shri Shambhu Ram through Shri Ravinder Kumar Dhiman, R/o Village Ghodav Dhauladhar Colony, Nagrota Bagwaan, District Kangra,

HP by employer Shri Anil Sikand, Managing Partner, M/s Sikand & Company, Chambaghat, District, Solan, HP w.e.f. 31-10-2001 is proper and justified? If not, what relief of service benefits, the above workman is entitled to?"

2. The petitioner has filed a statement of claim asserting therein that he was engaged as helper machine operator by the respondent company having its branch at Nagrota Bhagwan District Kangra on 2-9-1997, who was confirmed on 14-6-2001, who was terminated on 30-10-2001 without complying with the provisions of the Industrial Disputes Act, 1947 and that the services of the petitioner were terminated without giving notice to him which is illegal and that from the date of his termination, the post of helper machine is lying vacant and that the petitioner is a poor person and no body is in government job and that the petitioner was assured by the respondent that they would provide him the job but no job was provided to the petitioner and as such prayed for reinstatement along with back wages, seniority and all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of ordinate delay, the petitioner has not disclosed true facts and the petitioner is not covered within the definition of workman. On merits, it is contended that the petitioner was accorded a chance to join the services on stipend of Rs. 1580/- per month + incentives for a period of six months and the period was to be treated as training period in the organization of the respondent as per letter dated 14-6-2001 which was signed by the petitioner after accepting the terms and conditions and that the petitioner did not work properly, hence the contract was terminated on 21-11-2001 and that the petitioner was not a workman, who was a trainee on payment of stipend for a fixed period, hence there was no question of any notice and retrenchment compensation and that the petitioner is working with some other institution from the date of his contract ended and as such prayed for the dismissal of the petition.

4. No rejoinder filed. The following issues were framed by this court on 23-3-2006 on the pleading of the parties.

1. Whether the service of the petitioner has been illegally terminated by the respondent *w. e. f.* 31-10-2001? If so, its effect? ..OPP
2. If issue No.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? ..OPP
3. Whether the petition is not maintainable and the petitioner is not a workman? ..OPR
4. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2 .	Not entitled to any relief.
Issue No. 3.	Yes.
Relief.	Reference answered In negative per operative part of award.

REASONS FOR FINDINGS.

Issue No. 1 & 3:

7. Both these issues are taken up and discussed together being interlinked and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined himself as PW-1, who has stated that he was engaged as an Assistant Mechanic by M/s Sikand & Company, Chambaghat on 1-9-1997 and then he was shifted to Nagrota Bagwan branch after two months where he continued as such till 16-10-2001 and then he was terminated from service without any notice and without compensation, who had completed more than 240 working days in every calendar year preceding his termination and prayed for reinstatement in service alongwith seniority and continuity in service including back wages.

8. To rebut the case of the petitioner, the Ld. Counsel for the petitioner has made a statement that he does not want to lead any evidence.

9. The case of the petitioner is that he being the daily wages helper, who had completed 240 working days in each calendar year and also in twelve calendar months preceding his termination, who was illegally terminated from service without any reason and no notice nor compensation was paid to him at the time of his removal and as such he is entitled for reinstatement with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was appointed as trainee helper on stipend of Rs. 1580/- per month + incentives for a period of six months whose work was not found satisfactory to the satisfaction of the respondent, who was appointed purely on contract basis, who had not completed 240 working days in any calendar year preceding his termination, hence the petitioner is not entitled to any relief claimed by him.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent company as machine trainee helper on stipend of Rs. 1580/- per month + incentives. It is admitted case of the petitioner that he was engaged as trainee by the respondent at the stipend of Rs. 1700/- per month, who has further admitted that he was engaged on training only and no employment was given to him and also proved appointment letter Ex. RA placed on record. From the bare perusal of Ex. RA, it is clear that the petitioner was appointed as helper machine trainee by the respondent on stipend of Rs. 1700/- per month. It is also clear that the services of the petitioner were terminated on the basis of terms and conditions prescribed in Ex. RA, which was accepted by the petitioner. It is also borne out from the record that the petitioner had only worked with the respondent company for a period of six months, who has failed to prove on record that he has put in more than 240 working days in a calendar year preceding his termination, hence the case of the petitioner does not fall under section 25F of the Industrial Disputes Act, 1947.

13. Now, turning to the other aspect of the case, it is clear that the petitioner was trainee during the period he worked with respondent company under the name and style of M/s Sikand & Company on payment of stipend. It is well settled that where the respondent was being paid only a stipend which cannot be termed as wages and as such the respondent would not come within the ambit of the expression "workman" as defined under section 2(s) of the Industrial Disputes Act, 1947. here I am fortified with a view taken incase Management of Otis Elevator Co. (India) Ltd. Vs. Presiding Officer, Industrial Tribunal-III & another as reported in 2003-III LLJ 61 SC in which it was held that :

"Where the workman was being paid only a stipend he does not come within the ambit of the expression of workman as defined under section 2(s) of the Industrial Disputes Act"

In the instant case, having regard to the aforesaid terms of the appointment, it is clear that the petitioner was a mere trainee for a particular period and for a distinct purpose and the respondent was not bound to employ him in the works after the period of training is over. It, therefore, cannot be said that the petitioner was a workman of the respondent company in as much as the purpose of the engagement of the petitioner was only to offer him training under the terms and conditions stipulated above. No wage was paid to the petitioner as defined within the meaning of 'wages' under the Industrial Disputes Act and obviously, therefore, I have no hesitation in coming to the conclusion that the petitioner was only helper trainee on payment of stipend and not a workman within the definition of section 2(s) of I.D Act, 1947. Accordingly, both these issues are decided in favour of respondent and against the petitioner.

Issue No. 2 :

14. Since I have held under issue no.1 & 4 above that the services of the petitioner were not illegally terminated by the respondent w.e.f. 31-10-2001 being not the workman and only the trainee on payment of stipend, hence the petitioner is not entitled to any relief. Accordingly, issue No.2 is decided in favour of the respondent and against the petitioner.

RELIEF

As a sequel to my above discussion and findings on issue No.1 to 3 above, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this day of 22nd June 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref No. 173 of 2000.
Instituted on 30-11-2000.
Decided on. 10-6-2009.

Kandu Ram S/o Shri Chetru Ram R/o Village Kamsu, P.O Nogli, Tehsil Rampur, District Shimla, HP.

..Petitioner.

Vs.

1. Secretary HP State Electricity board, Kumar House Shimla-4.
2. The Executive Engineer, T&C Division, HPSEB, Rampur District Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri A.K Gupta, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of services of Shri Kandu Ram ex daily wages beldar by (1) Secretary, Himachal Pradesh Electricity Board, Vidyut Bhawan, Shimla-4 and (2) Executive Engineer, T&C Division, Himachal Pradesh State Electricity Board Rampur Bushehar, HP w. e. f. 24-6-99 without any rhyme and reason, notice, charge sheet, enquiry and without compliance of section 25-F of the Industrial Disputes Act, 1947 after seventeen years of prolonged service on the grounds of disability and making junior persons as regular work charged T- Mate as alleged is legal and justified? If not, to what relief of consequential service benefits including reinstatement, seniority, back wages and amount of compensation, Shri Kandu Ram is entitled ?”

2. The petitioner has filed claim through the next friend of petitioner asserting therein that petitioner was appointed by the respondents on the basis of daily wages as beldar after having been sponsored his name from the concerned employment exchange, who was posted under T & C Division No.1 at Rampur, who joined as such in the month of June 1982 and that the respondents shifted the T & C division from Rampur to some other place and the petitioner was given employment initially for 89 days and the petitioner under sub division no.1 at Rampur continued to work till 24-6-1999 and that the respondents terminated the services of the petitioner on 24-6-1999 without assigning any reason as no notice was served nor was paid salary in lieu of that at the time of termination and even no compensation was paid nor any enquiry was conducted against the petitioner and that the petitioner made several representations for employment but to no avail and that the persons junior to the petitioner have been designated as T-Mate by the respondents but the seniority of the petitioner was ignored by the respondent and that the petitioner is physically handicapped and is sole bread earner in his family and as such prayed for reinstatement alongwith all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of non-joinder of necessary parties, barred by limitation and non maintainable. On merits, it is contended that the petitioner was appointed as part time daily wager in the year 1983 and that T & C Division was shifted from Rampur to Hamirpur in the year 1988 and the petitioner had worked with the respondent No.2 till 28-8-1987 and then the petitioner had left the job of his own, who did not turn up for duties. It is denied that the petitioner worked at Rampur till 24-6-1999. It is contended that the claim petition is instituted through next friend, hence this claim petition is not maintainable. It is also denied that the respondents terminated the services of the petitioner and that the petitioner never made representations to the respondent and that the respondents have no such policy to keep the handicapped in service and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 2.5.2006 on the pleadings of the parties:

1. Whether the service of the petitioner has been illegally terminated by the respondent *w. e. f.* 24-6-1999 without complying the provisions of I.D Act, 1947? If so its effect? ..OPP
2. If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to? ..OPP
3. Whether the petition is bad for non joinder of necessary parties? ..OPR
4. Whether the petition is barred by limitation and is not maintainable? ..OPR
5. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1.	No
Issue No. 2.	Not entitled to any relief.
Issue No. 3.	No.
Issue No. 4.	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 :

7. Coming to this issue, the petitioner has examined Sohan Lal as PW-1, who has stated that he is the elder brother of Kandu Ram petitioner, who is dumb and deaf and is unable to make the statement, who is also present. Kandu Ram was engaged as beldar on daily wages with the respondents in June, 1982, who continued as such till 1999, who has completed 240 working days in a calendar year preceding his termination, who was engaged on the basis of interview letter issued by the employment exchange Rampur. No notice nor any compensation was paid to Kandu Ram and his juniors are still continuing with the respondent and as such prayed that his brother Kandu Ram may be reengaged with seniority and continuity in service alongwith back wages.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Santosh Kumar Junior Engineer, who has stated that the petitioner was engaged as daily wages beldar at Rampur on 26-1-1983 and continued as such till 25.8.1987 with breaks. The Rampur Division was transferred from Rampur to Hamirpur in 1988 and the petitioner abandoned the job of his own *w.e.f.* 25-8-1987 and the claim of the petitioner is wrong, who was never terminated from service and proved the mandays chart of the petitioner Ex. RA.

9. Shri Shashi Shirshoo, Ld. Counsel for the petitioner has vehemently argued at the very outset that the petitioner was terminated from service by the respondent without any reason and even the petitioner has completed 240 working days in each calendar year preceding his termination, who is deaf and dumb and even junior to him are still continuing with the respondents and as such he is also entitled for his reengagement.

10. On the contrary, Shri Bhagwan Chand Ld. Counsel for respondent has controverted the arguments of Shri Shirshoo and has submitted that the services of the petitioner were never terminated by the respondent at any point of time, who left the job of his own without any intimation to the respondent board and no junior to the petitioner is still continuing with the respondent.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it is clear that the petitioner had worked with the respondent as beldar *w. e. f.* 26-1-1983 to 25-8-1987 as per mandays chart Ex. RA placed on record which is not disputed. No doubt that the petitioner has tried to establish on record that has completed 240 working days with the

respondents in each calendar year preceding his termination but there is nothing on record which could show that the petitioner had completed 240 working days in a calendar year preceding his termination. On the other hand, the respondents have proved on record that the division in which the petitioner was engaged was shifted to Hamirpur in the year 1988 but the petitioner did not report for duty w. e. f. 25-8-1987 which clearly goes to show that the petitioner had no interest to his job. The petitioner has also tried to establish on record that he was terminated without notice and without payment of compensation but the respondent has proved that the petitioner has not completed 240 working days in twelve calendar months preceding his termination as he has put in 57 days in 1983, 94 days in 1984, 106 days in 1985, 127 days in 1986 and 140 days in 1987 and as such it is clear that the petitioner has not completed 240 working days in twelve calendar months preceding his termination, hence the petitioner is not entitled for protection of Section 25-F of the Industrial Disputes Act, 1947 before his service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsingh** in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

13. Now, adverting to the other aspect of the case, the petitioner has tried to establish on record that the respondent retained his juniors in the service while his services were terminated by an oral order. I find no force in this contention as the petitioner has failed to prove on record as to when his juniors joined the services of respondents board as daily wages beldar and whether they are still continuing in service especially when it is not proved on record that the alleged juniors are still continuing in service with the respondent and as such this contention has no force and is hereby rejected.

14. Thus, having regard to entire evidence on record and inview of the fact that the respondent has proved on record that the petitioner has not completed 240 working days in twelve calendar months preceding his termination and no junior to the petitioner was retained by the respondents Board. Accordingly, issue no.1 is decided in favour of respondents and against the petitioner.

Issue No. 2 :

15. Since I have held under issue No.1 above that the services of the petitioner were not illegally terminated by the respondents, hence the petitioner is not entitled to any relief. Accordingly, issue No.2 is decided against the petitioner and in favour of the respondent.

Issue No. 3 :

16. In support of this issue, no evidence was led by the respondent being the legal issue. Moreover, it not proved on record as to who are the necessary parties left to be impleaded in the claim petition. Inview of no such evidence on record, it can safely be concluded that the petition is not bad for non joinder of necessary parties. Accordingly, issue No.3 is decided in favour of petitioner and against the respondent.

Issue No. 4 :

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable and it is also well settled that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of **Hon'ble Supreme Court in a case reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another.** in which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issue No. 1 to 4, the claim of the petitioner fails and is hereby dismissed as a result of which the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 10th Day of June 2009 in the presence of parties counsels.

By order,
J. S. MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.**

Ref. 41/2002

12-6-2002

Amar Khadi Gramoudyog Karamchari

Vs.

President Amar Khadi, The Mall, Solan.

Present: Sh. J.C.Bhardwaj, Ld.AR for petitioner.
Sh. O.P.Sharma, Ld. Csl. for respondent.

Statement of Sh O. P. Sharma recorded separately. I am satisfied that both the parties have arrived at a lawful settlement and the respondent company has no objection if the salary of the petitioners Jagbir Singh and Madan Lal is being enhanced to Rs. 500/- per month over and above the gross salary of petitioners *w. e. f.* 1-6-2009, which settlement has been accepted by Sh. J.C.Bhardwaj, AR for petitioner. In view of above settlement the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File after completion be consigned to records.

Announced
12-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.**

Ref. 119/2006

15-6-2009

Sh. Dinesh Kumar

V/s

The Manager, M/s Hem Builders , Distt Kinnour.

Present: None.

Sh. Surinder Saklani, Ld Csl. for respondent.

It is 3. 44 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the petitioner. It seems that the petitioner is not interested to persue this case. Accordingly, the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File , after completion , be consigned to records.

Announced:
15-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.**

Ref. 120/2006

15-6-2009

Sh. Rakesh Negi

V/s

Project Officer Hem Builders, Kangra

Present: None.

Sh. Surinder Saklani, Ld Csl. for respondent.

It is 3. 44 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the petitioner. It seems that the petitioner is not interested to persue this case. Accordingly, the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File , after completion , be consigned to records.

Announced:
15-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.**

Ref. 144/2007

20-6-2009

Workers Union

V/s

Factory Manager M/s Jaseh Packagings India Ltd P/Sahib

Present: None.

It is 3.35 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the parties. It seems that the Parties are not interested to pursue this case. I am also satisfied that the parties have properly served. Accordingly, the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File , after completion , be consigned to records.

Announced:
20-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.**

Ref. 44/2008

3-6-2009

Sh. Rajinder Kumar

V/s

The Factory Manager, M/s Jaish Packagings India, Paonta Sahib, Sirmaur

Present: None.

It is already 12.22 P. M. but no appearance put in by the parties, Be awited.

It is 3. 44 P.M. Case is called in the pre and post lunch sessions but none appeared on behalf of the parties. It seems that the parties are not interested to pursue this case. Accordingly, the claim of the petitioner is dismissed in default and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion , be consigned to records.

Announced:
2-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. 186 of 2002.

Instituted on. 21-6-2002

Decided on. 2-6-2009.

Madhu Bala D/o Shri Dev Raj Sharma R/o Village Sayana, P.O Churdhar, Tehsil Rajgarh, Distt. Sirmour, HP.
..Petitioner.

Vs.

1. The Director of Horticulture, HP Nav Bahar Shimla-2.
2. The District Horticulture Officer, Nahan, Distt. Sirmour, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.

For respondents : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of services of Smt. Madhu Bala D/o Shri Dev Raj Sharma ex-daily wages beldar by the Director of Horticulture, HP Nav Bahar Shimla-2 (2) The District Horticulture Officer, Nahan Distt. Sirmour, HP w.e.f. 13-7-2000 without complying with the provisions of the Industrial Disputes Act, 1947 is proper and justified?”

“Whether Smt. Madhu Bala is entitled to the post of clerk as alleged on the basis of work done by her? If so, what relief of service benefits, back wages, seniority and amount of compensation Smt. Madhu Bala is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that at first instance, the petitioner was inducted into the employment of the department at Rajgarh during the month of May, 1986 and remained continued in the employment of the respondent till her illegal removal on 23-8-1989, who was working with full devotion and to the satisfaction of her superiors and the removal of the petitioner was violative of labour legislations, who was orally terminated from service without any cogent reason or justification, who has worked for more than 240 days during the tenure of her service and that thereafter the petitioner was continuously making representations for reemployment, who was reinducted into the employment during the month of April, 1999, who remained till 13-7-2000 and then she was terminated from service without compliance of the statutory and mandatory provisions of Labour law legislations and that the petitioner has worked for more than 240 days during her employment and that the petitioner is well qualified and she was given the work of store keeper and at the same time she also performed other clerical duties in the office of the respondent as diary dispatch clerk, who was never paid the wages of clerk for which she was entitled in accordance with the work taken from her during the said period and that the termination of the services of the petitioner on both times was violative of section 25-B of the Act as no notice nor wages nor compensation in lieu of that was paid to the petitioner and after the removal of the petitioner from service, several other workmen were engaged by the department in violation of section 25-G and H of the Act and the petitioner has been discriminated under Article 14 & 16 of Constitution of India in the matter of employment and that the department of Horticulture is owned by State of HP and as such is the State for the purpose of Article 12 of Constitution of India and as such the petitioner could not have been condemned unheard and that sudden removal of the petitioner from the employment by the respondent had made the integrity of the petitioner doubtful in the eyes of one and all, who is unemployed since her illegal termination and as such prayed to declare the services of petitioner as clerk and the respondent be directed to make the payment of clerk and for reengagement with all consequential benefits from the date of illegal termination, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objection of abandonment. On merits, it is contended that the petitioner was initially engaged as unskilled daily paid labourer w. e. f. December, 1986 to 23-8-1989 with the respondent department whose services were never terminated but she left the job of her own as to undergo some Gardner training at Mashobra during the year 1989. It is also contended that the petitioner approached the respondent department in the month of April, 1999 for reengagement on muster roll as daily wages but due to clear cut ban imposed by the State Govt. on engagement of new daily paid workers, the petitioner could not be engaged on muster roll basis. The petitioner was engaged on contract basis w.e.f. April, 1999 to 13-7-2000, who was not given work after 13-7-2000 due to non availability of work and that the petitioner was initially engaged as unskilled daily paid worker on muster roll basis for cleaning of tables and to deliver the files, who was rightly paid the wages as admissible to her, hence the question of paying the wages of clerk does not arise at all, who has completed 24 days in 1986, 271 days in 1987, 296 days in 1988 and 146 days upto 23-8-1989 and thereafter the petitioner left the job of her own and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this court on 26-10-2005 on the pleading of the parties.

1. Whether Smt. Madhu Bala has been wrongly and illegally terminated from service w. e. f. 13-7-2000 without complying with the provisions of Industrial Disputes Act, 1947? If so, its effect? ..OPP

2. Whether *smt. Madhu Bala* is entitled for the wages of post of clerk on the basis of work done by her? .. OPP
3. If issue no.1 & 2 are proved in affirmative, whether the petitioner is entitled for relief claimed? ..OPP
4. Whether the petition is not maintainable as alleged? ..OPR
5. Whether the petition is barred by limitation? ..OPR
6. Relief.
6. I have heard the *Ld. Counsels* for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	No.
Issue No. 2	No.
Issue No. 3	Not entitled to any relief.
Issue No. 4	No.
Issue No. 5	No.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1 & 2:

8. Both these issues are taken up and discussed together being correlated and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined herself as *PW-1*, who has stated that she was engaged as clerk during May, 1986 till August, 1989 and proved the working days *Ex. PW-1A*, who was removed from service during 1989, who had not abandoned the job and her experience certificate is *Ex. PW-1B*, who requested the respondent for reengagement and they have told her that as and when the work would be available, she would be called. She was called in April, 1999 and remained in job till 13-7-2000 and her representations are *Ex. PW-1C* and *PW-1D*. No notice nor compensation was paid to her when she was removed from service in 1989 and 2000, who worked continuously from April, 1999 to 13-7-2000. No contract was executed when she was engaged second time and in 1995 one lady was engaged by the respondents who is still working. No enquiry was conducted against her by the respondent.

9. To rebut the case of the petitioner, the respondents have examined two *RWs* in all. *RW-1* *Shri S. R. Razta*, Senior Assistant, Horticulture Research Centre *Mashobra* has stated that he has brought the attested photocopies of the attendance register *Ex. R1* (12 sheets) and the detail of attendance days is *Ex. R2* and the training candidates were not paid any stipend to the govt. sponsored candidates whereas the stipend was paid to the persons who directly came for training and they have paid the stipend to the petitioner *Madhu Bala* as per detail given in *Ex. R2*.

10. *RW-2* *Shri Amrit Pal Verma* has stated that they have received letter *Ex. R3* from Research Centre *Mashobra* and has brought the muster rolls of the petitioner *Ex. R4* to *R9* and the mandays chart of the petitioner is *Ex. R10*. The petitioner left the work on 24-8-1989 and thereafter she returned to resume her duties, who was not removed by the department.

11. The case of the petitioner is that she being the daily wages beldar having worked for more than 240 days in each calendar year preceding her termination. Moreover, she has also worked as store keeper and diary dispatch clerk with the respondent but the wages for the post of clerk were not paid to her, who was illegally terminated by the respondent without following the mandatory provisions of Industrial Disputes Act, 1947 and even after her termination, junior persons are retained by the respondent and as such she is also entitled for her reinstatement in service with all consequential benefits alongwith back wages.

12. On the contrary, the respondents contend that the petitioner was never terminated from service, who abandoned the job of her own and had gone for Gardner training at *Mashobra* and did not turn up to resume her duties, who was again engaged on contract basis *w. e. f.* April, 1999 to 13-7-2000 and after the completion of work, her services were not required, hence the petitioner is not entitled to any relief as prayed by her.

13. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the petitioner was working under the respondent as daily wages beldar and according to the petitioner, she also performed her duties as store keeper and diary dispatch clerk and her termination without any notice and without compensation on the completion of 240 working days in a calendar year preceding termination. On the other hand, the respondent has proved on record that the petitioner was never terminated by the respondent department, who herself left the job of her own as she had undergone Gardner training course at Mashobra in the year 1989 by examining RW1 Shri S.R Razta, who has specifically stated that the name of the petitioner was not sponsored by the Govt., who was not the departmental candidate but she came directly for the training for which the stipend was also paid to her, hence it does not lie in the mouth of the petitioner to say that she was illegally terminated from service by the respondent without any reason. Moreover, the petitioner has tried to establish on record that she has completed 240 working days in twelve calendar months from the date of her termination but there is nothing on record which could show that the petitioner had completed 240 working days in twelve calendar months preceding her termination. Apart from oral evidence, the petitioner has not produced any evidence on record to prove the fact that he had worked for more than 240 days in a twelve calendar months preceding her termination. The mandays chart Ex. R10 relied upon by respondent has revealed that the petitioner has completed 240 working days in the year 1987, and 88 and thereafter the petitioner did not turn up for duties and left the job without any intimation to the department. The petitioner has tried to take the benefit of previous years to the effect that she had put in 240 working days in the calendar year 1987 and 88 but there is nothing on record which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding her termination *w. e. f.* 13-7-2000 and as such there is no violation of section 25-F of the Industrial Disputes Act, 1947 as the petitioner has failed to prove on record that she has worked for 240 working days in twelve calendar months preceding his termination. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; mandays chart produced by the respondent employer has not been contradicted and as such the petitioner has failed to discharge her burden that she was in the employment for 240 working days in 12 calendar months preceding termination and as such the petitioner is not entitled for protection of Section 25-F before her service was terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsingh** in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

15. Moreover, it is borne out from the record that the petitioner had worked from April 1999 to 13.7.2000 on contract basis with the respondent, who was not given work thereafter due to non availability of work. It is significant to note that the petitioner has not proved on record as to how many days she worked with the respondent from April 1999 to 13-7-2000. In view of no such evidence on record it can safely be concluded that the petitioner has not completed 240 working days in twelve calendar months preceding her termination.

16. Now turning to the other aspect of the case where the petitioner has claimed that she is entitled wages to the post of clerk having worked as clerk and store keeper but there is nothing on record which could show that the petitioner had worked with the respondent as store keeper and diary dispatch clerk. Moreover, it is not the case of the petitioner that she was not paid the salary for the period she had worked with the respondent. It is significant to note that the petitioner was granted the wages of a beldar on daily wages and also the wages as agreed upon when she worked on contract basis but she was neither engaged as store keeper nor diary dispatch clerk nor she ever protested while receiving the wages of beldar at the relevant time. It is significant to note that the petitioner has never made representation to the higher authorities of respondent for payment of wages of clerk. Moreover, the petitioner has relied upon experience certificate Ex. PW-1/B and her application to reengage her Ex. PW-1/C to the Director Horticulture HP but it remains a fact that the experience certificate has not been proved in accordance with law as the officer issued the same neither competent to issue the same nor he was examined to prove the same and therefore no reliance can be placed on Ex. PW-1/B in order to show that the petitioner had worked as store keeper as well as other clerical duties especially when no record from the office of the respondent was summoned to prove the same and obviously therefore, I have no hesitation in coming to the conclusion that the petitioner Madhu Bala is not entitled to wages to the post of clerk especially when it is not proved on record that she had worked as store keeper as well as other clerical post *w.e.f.* 1986 to August 1989 and as such the claim qua the wages of clerk to the petitioner is rejected being devoid of merit.

17. Thus, having regard to entire evidence on record and in view of the fact that the respondent has proved on record that the petitioner has not completed 240 working days in twelve calendar months preceding her termination and further the petitioner has failed to prove on record that she is entitled to wages to the post of clerk especially when it is not proved on record that she had worked as store keeper and diary dispatch clerk at the relevant time and accordingly both these issues are decided in favour of respondents and against the petitioner.

Issue No. 3:

18. Since I have held under issue no.1 & 2 above that the services of the petitioner have not been illegally terminated by the respondents and further she is not entitled to the wages to the post of clerk as she failed to prove on record that she had worked as store keeper and diary dispatch clerk at the relevant time, hence the petitioner is not entitled to any relief claimed by her. Accordingly, issue No. 3 is decided in favour of respondents and against the petitioner.

Issue No. 4:

19. In support of this issue, no evidence was led by the respondents being the legal issue. However I find nothing wrong with this claim which is perfectly maintainable. Accordingly, this issue is decided in favour of petitioner and against the respondents.

Issue No. 5:

20. In support of this issue, no evidence was led by the respondent being the legal issue. However, it is well settled that there is no limitation under the Industrial Disputes Act, 1947, as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum– processing Service Society Limited and Another. In which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947. Accordingly, this issue is decided in favour of petitioner and against the respondents.

RELIEF

As a sequel to my above discussion and findings on issue No. 1 to 5, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 2nd day of June, 2009 in the presence of parties counsels.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.

Ref. 152/2007

12-6-2009

Sh Ravi Dutt

V/s

M.D.M/s Indo Farm Tractors & Motors , Ltd Baddi Distt Solan

Present: Sh Umesh Sharma, Ld Csl for petitioner.
Sh.Rahul Mahajan, Ld Csl. with Sh Chatter Singh
Sr Executive (HR) for respondent.

Statement of Sh. Chatter Singh Sr Executive (HR) recorded separately. I am satisfied that both the parties have arrived at a lawful compromise and the respondent company has taken back the services of petitioner with retrospective effect with continuity and seniority in service but without back wages, which has been accepted by the petitioner vide

his statement recorded separately. Accordingly, the claim of the petitioner is allowed with seniority and continuity in service but without back wages as per settlement have been affected between the parties and the services of petitioner has already been taken back by the respondent company with retrospective effect with all consequential benefits expect the back wages.

However the respondent company is directed to consider the medical leave of petitioner, if he is so entitled subject to ESI rules and regulations. In view of above settlement, the reference is answered accordingly. Let a copy of this award sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced:-
12-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.**

Ref. 274/2002

2-6-2009

Sh Trilok Singh

V/s

M/s Jyco India Ltd Solan

Present:- Sh.J.C.Bhwardwaj, Ld AR for petitioner.
Sh. Rajeev Sharma, Ld csl. for respondent.

Heard. The payment by way of three cheques of Rs.71,000/- +3,000/-+1073/- made to the petitioner today in the Court. Let the statement of the petitioner be recorded on oath.

Statement of Shri Satish Kumar S/o Shri Uttam Chand aged 35 years R/o Village & P. O. Kandor, Tehsil Nurpur, Distt. Kangra, HP.

On. S. A.
2-6-2009

Stated that I have received three cheques of Rs. 71,000/- +3,000/-+1073/- from the respondent in the court being the full & final settlement of my claim and as such there is nothing due to be recovered from the respondent and as such my claim may kindly be dismissed as satisfied.

R.O.&A.C.

Petitioner with Shri JC Bhardwaj, AR.

Statement recorded separately. I am satisfied that the petitioner has made the statement voluntarily without any extraneous influence on him, who has received all three Cheques in my presence in the Court and as such has accepted it to be full & final settlement of his Claim. Accordingly the claim of the petitioner is dismissed as satisfied as a result of which the reference is ordered to be answered accordingly. Let a copy of this award of ordered to sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court.
2-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.**

Ref. 276/2002

2-6-2009

Sh. Satish Kumar

V/s

M/s Jyco India Ltd , Solan

Present: Petitioner with Sh. J.C. Bhjardwaj, Ld AR for petitioner.
Sh. Rajeev Sharma, Ld csl. for respondent.

Heard. The payment by way of three cheques of Rs.71,000/- +3,000/-+1073/- made to the petitioners AR today in the Court. Let the statement of the petitioner's AR be recorded on oath.

Statement of Shri J.C. Bhjardwaj, AR for petitioner

On.S.A.
2-6-2009

Stated that I being the authorized representative of the petitioner is competent to make this statement have received three cheques of Rs. 71,000/- +3,000/-+1073/- from the respondent in the court being the full & final settlement of the petitioners claim and as such there is nothing due to be recovered from the respondent and as such my claim may kindly be dismissed as satisfied.

R.O.& A.C.

JC Bhardwaj, Authorized Representative.

Statement recorded separately. I am satisfied that the petitioner has made the statement voluntarily without any extraneous influence on him, who has received all three Cheques in my presence in the Court and as such has accepted it to be full & final settlement of his Claim. Accordingly the claim of the petitioner is dismissed as satisfied as a result of which the reference is ordered to be answered accordingly. Let a copy of this award of ordered to be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court.
2-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.**

Ref. 273/2002

2-6-2009

Sh. Sanjeev Kohli

V/s

M/s Jyco India Lrd Solan

Present: Petitioner with Sh.J.C.Bhjardwaj, Ld AR for petitioner.
Sh. Rajeev Sharma, Ld csl. for respondent.

Heard. The payment by way of three cheques of Rs.71,000/- +3,000/-+1458/- made to he petitioner today in the Court. Let the statement of the petitioner be recorded on oath.

Statement of Shri Sanjeev Kohli S/o Shri Surinder Kohli aged 34 years R/o House no.44/11 Chakarvarti Mohalla(Kurukshetra) Hatyana.

On.S.A.
2-6-2009

Stated that I have received three cheques of Rs. 71,000/- +3,000/-+1458/- from the respondent in the court being the full & final settlement of my claim and as such there is nothing due to be recovered from the respondent and as such my claim may kindly be dismissed as satisfied.

R.O.&A.C.

Petitioner with Shri JC Bhardwaj, AR.

Statement recorded separately. I am satisfied that the petitioner has made the statement voluntarily without any extraneous influence on him, who has received all three Cheques in my presence in the Court and as such has accepted it to be full & final settlement of his Claim. Accordingly the claim of the petitioner is dismissed as satisfied as a result of which the reference is ordered to be answered accordingly. Let a copy of this award of ordered to sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court.
2-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP.**

Ref. 277/2002

2-6-2009

Sh Sanjeevan Kumar

V/s

M/s Jyco India Ltd , Soaln

Present: Petitioner with Sh.J.C.Bhwardwaj, Ld AR for petitioner.
Sh. Rajeev Sharma, Ld csl. for respondent.

Heard. The payment by way of three cheques of Rs.71,000/- +3,000/-+1123/- made to he petitioner today in the Court. Let the statement of the petitioner be recorded on oath.

Statement of Shri Sanjeevan Kumar S/o Shri Dhani Ram Sharma aged 35 years R/o Vill. & P/o Dadh, Teh. Palampur Distt. Kangra.

On.S.A.
2-6-2009

Stated that I have received three cheques of Rs. 71,000/- +3,000/-+1123/- from the respondent in the court being the full & final settlement of my claim and as such there is nothing due to be recovered from the respondent and as such my claim may kindly be dismissed as satisfied.

R.O.&A.C.

Petitioner with Shri JC Bhardwaj, AR.

Statement recorded separately. I am satisfied that the petitioner has made the statement voluntarily without any extraneous influence on him, who has received all three Cheques in my presence in the Court and as such has accepted it to be full & final settlement of his Claim. Accordingly the claim of the petitioner is dismissed as satisfied as a result of which the reference is ordered to be answered accordingly. Let a copy of this award of ordered to sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court.

2-6-2009

By order,
Sd/-
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

Ref No. 41 of 2007.
Instituted on. 7-5-2007
Decided on. 30-6-2009.

Sanjay Kumar S/o Shri Sunder Singh R/o Village & P.O Tanher, Tehsil Sarkaghat, District Mandi, HP.

..Petitioner.

Vs.

The Executive Engineer, HPPWD Medical College Division, Shimla-3, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri P.P Chauhan, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of services of Shri Sanjay Kumar S/o Shri Sunder Singh workman by the Executive Engineer, HPPWD, Medical College Division, Shimla-3, HP w.e.f. 10-11-2001 after giving retrenchment notice whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was initially engaged as daily wages beldar on 21-8-1998, who completed 102 days in 1998, 292 days in 1999, 357 days in 2000, 231 days in 2001 and that the services of the petitioner were retrenched on 3-10-2001 without observing the principals of natural justice as well as the mandatory provision of Industrial Disputes Act, 1947 whereas similar situated persons S/Sh. Jai Ram, Nem Chand, Sandeep Kumar, Amar Singh, Vijay Kumar, Kishan Chand, Murli Singh, Raj, Kapoor Singh, Satinder Singh, Kishan Chand and Meera Devi have been retained under different designations which is against the provisions of I.D.Act, 1947 and that the petitioner approached Administrative Tribunal against his termination which was dismissed on the ground of jurisdiction and that the petitioner was discharging his duties with the best of his abilities and to the entire satisfaction of his superiors, who had completed more than 240 days in every calendar year, hence the termination order is against the mandatory and statutory provisions of section 25F, 25N, 25G and 25H of the I. D. Act, 1947 and as such prayed for reinstatement in service alongwith all consequential benefits of back wages, seniority, continuity, regularization, promotion, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and that the retrenchment of the petitioner and others was necessitated after the completion of work. On merits, it is contended that the petitioner alongwith others was retrenched after making the compliance of mandatory provisions of section 25F of the I.D Act, 1947 as the notice was issued on 3-10-2001 indicating the reason that the petitioner had completed 240 days in each calendar year and that number of construction works which are being executed by respondent are on contract basis and some of the work has been completed which are handed over to the respective departments. It is also contended that due to completion of works and non availability of funds, the government has closed two sub divisions and merged with sub division No. II and that the services of the

petitioner had to be discontinued after making the compliance of section 25F of the Act, 1947 and that the petitioner was informed to collect the compensation at any time during the office hours and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 20-10-008 on the pleadings of the parties.

1. Whether the service of Shri Snajay Kumar petitioner by the Executive Engineer, HPPWD Medical College Division-3, H.P. w. e. f. 10-11-2001 after giving retrenchment notice and junior to him are still retained by the employer is improper and unjustified as alleged? ..OPP
2. If issue No.1 is proved in affirmative, to what service benefits, the petitioner is entitled to? ..OPP
3. Whether the petition is not maintainable under section 2 of the Industrial Disputes Act, 1947 as alleged? ..OPR
4. Whether the retrenchment of petitioner has necessitated due to closure of sub division of Medical College HPPWD after completion of work as alleged? ..OPR
5. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes but without legal notice and without payment of compensation.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Issue No. 4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who tendered his affidavit Ex. PA averring therein that he was engaged by the respondent as mortar on 21.8.1998 and completed about 102 days in 1998, 292 days in 1999, 357 days in 2000, 231 days in 2001, who was retrenched on 03-10-2001 without observing the principals of natural justice as well as the mandatory provision of Industrial Disputes Act, 1947 whereas similar situated persons S/Sh. Jai Ram, Nem Chand, Sandeep Kumar, Amar Singh, Vijay Kumar, Kishan Chand, Murli Singh, Raj, Kapoor Singh, Satinder Singh, Kishan Chand and Meera Devi have been retained under different designations which is against the provisions of I.D. Act, 1947, who was entitled for a notice under section 25N, who was discharging his duties with the best of his abilities and to the entire satisfaction of his superiors, who had completed 240 days in a calendar year preceding his termination hence prayed for reinstatement with full back wages and interest @ 18%.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Deepak Raj Chauhan, who has stated that he is posted as an Assistant Engineer with the IGMC Sub Division, Shimla since April, 2008 and is well conversant with the facts of the case. The petitioner was engaged as mortar mate on daily wages on 8/98, who continued as such till 9/2001 with Medical sub division Shimla No.3, who was terminated on 10-11-2001 after serving a notice upon him dated 3-10-2001, who did not join his duties after 3-9-2001 and the compensation was collected and the petitioner was asked to collect the same in any day within a month but the petitioner did not turn up to collect the same and two sub divisions were merged with Sub Division no.2 after completion of work and due to paucity of funds and the buildings were handed over to the concerned department and the merger of these sub divisions by the State govt. is Ex. RA and the mandays chart of the petitioner is Ex. RB and the services of the petitioner was disengaged for want of work vide notice Ex. RC and no junior to the petitioner was engaged by the respondent and as such the claim of the petitioner is false.

10. The case of the petitioner is that he being the daily wages mortar mate having worked for more than 240 working days is entitled to be reinstated in service as no valid and legal notice was served upon the petitioner nor compensation was paid to him by the respondent.

11. On the contrary, the respondent contends that the petitioner was engaged against specific work and for specific period whose services have been terminated after completion of work and even retrenchment notice under section 25F was duly served upon the petitioner, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that notice under section 25F Ex. RC was sent to the petitioner but there is nothing on record which could show that it was duly served upon the petitioner. It is significant to note that no compensation in lieu of notice was paid to the petitioner by the respondent till to date. What to speak of payment of compensation to the petitioner, the respondent even did not calculate the quantum of compensation to be paid to the petitioner by the respondent and as such it is clear that no legal and valid notice was served upon the petitioner by the respondent nor compensation was paid to the petitioner at the time of his retrenchment.

14. Now, turning to the legal aspect of the case, the respondent was required to serve the petitioner with three months notice in writing as required under section 25N of the Industrial Disputes Act, 1947 having more than hundred workmen in their establishment as such mandatory notice for three months was required to be served upon the petitioner which was never served upon the petitioner by the respondent for the reasons best known to it. Moreover, Section 25N of the I.D Act, 1947 provides:

SECTION 25N : CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMAN:

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:

- (a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
- (b) the prior permission of the appropriate government or such authority as may be specified by that government by notification in the official gazette (herein after in this section referred to as the specified authority) has been obtained on an application made in this behalf.*

(2) An application for permission under sub section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under sub section (1) has been made, the appropriate government or the specified authority, after making such enquiry as it things fit and after giving the reasonable opportunity of being heard to the employer, the workman concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of reason stated by the employer, the interest of the workman and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workman.

Here, I am fortified with a view taken by the Hon'ble Supreme Court incase titled as Uttranchal Forests Development Corporation & Anr Vs. Jabar Singh & Ors. as reported in 2007-II-LLJ 95 in which it was held that :

“Retrenchment notice in question not complying with two conditions of section 25-N namely giving three months notice to workmen in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages”

In the instant case, the respondent has not complied with the mandatory provisions of section 25N of the Industrial Disputes Act, 1947 nor paid the compensation to the petitioner at the time of his termination from service and as such the termination of the petitioner w. e. f. 10-11-2001 is held illegal, improper and unjustified. Moreover, the petitioner could not prove on record that his juniors are still continuing with the respondent department especially when the two medical sub divisions of HPPWD have been merged with division No. II nor the record has been summoned from the office of the respondent to prove that the juniors to petitioner are still working with the respondent

department. Therefore, having regard to the entire evidence on record and in view of the fact that the termination of the petitioner for want of proper notice under section 25N and no compensation in lieu of three months notice has been paid to the petitioner by the respondent at the time of his termination and obviously therefore, this issue is decided in favour of petitioner and against the respondent holding that the services of the petitioner has been retrenched *w. e. f.* 10-11-2001 without giving valid and legal notice is improper, illegal and unjustified.

Issue No. 2:

15. Since I have held under issue No. 1 above, the services of petitioner have been illegally terminated by the respondent without serving proper notice under section 25N of the Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3:

16. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this reference which is perfectly maintainable in the present form. Accordingly, issue No. 3 is decided in favour of the petitioner and against the respondent.

Issue No. 4.

17. In support of this issue, the respondent has examined RW-1 Er. Deepak Raj Chauhan, Assistant Engineer, HPPWD sub division IGMC, Shimla, how has stated that tow sub divisions No. 3 & 4 were merged with sub division No. 2 due to paucity of funds and completion of works and the buildings were handed over to the concerned department, who has proved the notification of state government Ex. RA of merger of these sub divisions. On the other hand, the petitioner has not cross examined Er. Deepak Raj Chauhan on the point of completion of work and merger of two sub divisions No. 3 & 4 with sub division No. 2. In view of un rebutted evidence on record, it can safely be concluded that the retrenchment of the petitioner necessitated due to closure of sub division of medical college HPPWD after completion of work and as such issue No. 4 is decided in favour of the respondent and against the petitioner.

RELIEF

As a sequel to my above discussion and findings on Issue No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed as a result of which retrenchment notice under section 25F of the Industrial Disputes Act, 1947 issued by the respondent is hereby quashed and set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of June, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

Ref No. 168 of 2006
Instituted on. 1-12-2006
Decided on. 30-6-2009

Ravi Kumar S/o Shri Rewali Singh R/o Village & P.O Dhawali (Sarkarain Dhar), Tehsil Sarkaghat, District
Mandi, HP. *..Petitioner.*

Vs.

The Executive Engineer, HPPWD Medical College Division, Shimla-3, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri P.P Chauhan, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of services of Shri Ravi Kumar S/o Shri Rewali Singh workman by the Executive Engineer, HPPWD, Medical College Division, Shimla-3, HP w. e. f. 10-11-2001 after giving retrenchment notice whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was initially engaged as a mortar mate @ Rs. 65/- per day in August, 1998 by the respondent and that after the appointment, the petitioner worked as such till 10-11-2001, who was terminated on 10-11-2001 after serving a retrenchment notice upon him under section 25F of the Industrial disputes Act, 1947 whereas the other similar situated persons were retained by the respondent, who are still continuing with the department and that the petitioner has completed 240 days preceding the date of his termination in every year and that the petitioner has unblemished service record, who never gave an opportunity to the respondent to raise any finger towards his work and conduct and that the petitioner made several requests for his reengagement as lot of work is available with the respondent but all in vain and even the respondent has engaged fresh hands as mortar mate into the employment and that the petitioner filed an OA before the Administrative Tribunal which was dismissed on the ground of jurisdiction and that the retrenchment notice was served upon the petitioner, who had not paid the compensation and the respondent has opted to retain the juniors in the office by manipulating the things and juniors to petitioner S/Shri Sandeep Kumar, Kapoor Singh and Vishal are still continuing with the respondent and that the respondent has disengaged the petitioner without assigning any rhyme or reason as the respondent gave no opportunity of hearing before termination of the services of the petitioner and that the respondent has failed to tender retrenchment compensation alongwith notice and that notice under section 25F served upon the petitioner is void ab-initio as the notice should have been made under section 25N as the department of PWD is an Industrial establishment as defined in the Act and the work is of regular nature and that the respondent is required to maintain the seniority of the workman and incase of the petitioner, the respondent has failed to discharge its duties and as such prayed for reinstatement in service alongwith all consequential benefits of back wages, seniority, continuity, regularization, promotion, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and that the retrenchment of the petitioner and others was necessitated after the completion of work. On merits, it is contended that the petitioner alongwith others was retrenched after making the compliance of mandatory provisions of section 25F of the I.D Act, 1947 as the notice was issued on 3-10-2001 indicating the reason that the petitioner had completed 240 days in each calendar year and that number of construction works which are being executed by respondent are on contract basis and some of the work has been completed which are handed over to the respective departments. It is also contended that due to completion of works and non availability of funds, the government has closed two sub divisions and merged with sub division no. II and that the services of the petitioner had to be discontinued after making the compliance of section 25F of the Act, 1947 and that the petitioner was informed to collect the compensation at any time during the office hours and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 16-11-2007 on the pleadings of the parties.

1. Whether the service of the petitioner has been retrenched w. e. f. 10-11-2001 after giving notice whereas the junior employees are retained? If so, its effect? ..OPP
2. If issue No. 1 is proved in affirmative, to what relief, the petitioner is entitled to? ..OPP
3. Whether the present reference is not maintainable? ..OPR
4. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes but without legal notice and without payment of compensation.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who tendered his affidavit Ex. PA averring therein that he was engaged by the respondent as mortar mate @ Rs. 65/- per day w. e. f. August, 1998 by the respondent, who was discharging his duties with the best of his ability and to the entire satisfaction of his superiors, who had completed more than 240 days in each calendar year and also in twelve calendar months from the date of his termination, who was terminated on 10-11-2001 by giving a notice under section 25F of the Industrial Disputes Act but no retrenchment compensation was paid to him alongwith notice, who was entitled for a notice under section 25N as the respondent department is an industrial establishment and juniors to him S/Shri Sandeep Kumar, Parveen Kumar, Vijay Kumar, Kapoor Singh, Vishal and Pushpa are still continuing and have been regularized by the respondent, hence prayed for reinstatement with full back wages alongwith interest @ 18%.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Deepak Raj Chauhan, who has stated that he is posted as an Assistant Engineer with the IGMC Sub Division, Shimla since April, 2008 and is well conversant with the facts of the case. The petitioner was engaged as mortar mate on daily wages on 11-8-1998, who continued as such till 30-9-2001 and proved the mandays chart Ex. RA. There were three Sub Divisions with Medical Division of which two were subsequently merged with Sub Division no.2 after completion of work and due to paucity of funds vide notification Ex. RB. The construction work of Medical Division were being executed by the private contractors on contract basis under the supervision of the department and on completion, the building was handed over to the concerned department and after the completion of the work, the services of the petitioner was disengaged for want of work vide notice Ex. RC alongwith one month compensation which was duly received by the petitioner but no compensation was received by the petitioner and no junior to the petitioner was engaged by the respondent.

10. The case of the petitioner is that he being the daily wages mortar mate having worked for more than 240 working days is entitled to be reinstated in service as no valid and legal notice was served upon the petitioner nor compensation was paid to him by the respondent.

11. On the contrary, the respondent contends that the petitioner was engaged against specific work and for specific period whose services have been terminated after completion of work and even retrenchment notice under section 25F was duly served upon the petitioner, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that notice under section 25F Ex. RC was sent to the petitioner but there is nothing on record which could show that it was duly served upon the petitioner. It is significant to note that no compensation in lieu of notice was paid to the petitioner by the respondent till to date. What to speak of payment of compensation to the petitioner, the respondent even did not calculate the quantum of compensation to be paid to the petitioner by the respondent and as such it is clear that no legal and valid notice was served upon the petitioner by the respondent.

14. Now, turning to the legal aspect of the case, the respondent was required to serve the petitioner with three months notice in writing as required under section 25N of the Industrial Disputes Act, 1947 having more than hundred workmen in their establishment as such mandatory notice for three months was required to be served upon the petitioner which was never served upon the petitioner by the respondent for the reasons best known to it. Moreover, Section 25N of the I.D Act, 1947 provides:

SECTION 25N : CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMAN.

(1) *No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:*

- (a) *the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*

- (b) *the prior permission of the appropriate government or such authority as may be specified by that government by notification in the official gazette (herein after in this section referred to as the specified authority) has been obtained on an application made in this behalf.*

(2) *An application for permission under sub section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.*

(3) *Where an application for permission under sub section (1) has been made, the appropriate government or the specified authority, after making such enquiry as it things fit and after giving the reasonable opportunity of being heard to the employer, the workman concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of reason stated by the employer, the interest of the workman and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workman.*

Here, I am fortified with a view taken by the Hon'ble Supreme Court incase titled as Uttranchal Forests Development Corporation & Anr Vs. Jabar Singh & Ors. as reported in 2007-II-LLJ 95 in which it was held that :

“Retrenchment notice in question not complying with two conditions of section 25-N namely giving three months notice to workmen in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages”

In the instant case, the respondent has not complied with the mandatory provisions of section 25N of the Industrial Disputes Act, 1947 nor paid the compensation to the petitioner at the time of his termination from service and as such the termination of the petitioner w. e. f. 10-11-2001 is held illegal, improper and unjustified. Moreover, the petitioner could not prove on record that his juniors are still continuing with the respondent department especially when the two medical sub divisions of HPPWD have been merged with division no. II nor the record has been summoned from the office of the respondent to prove that the juniors to petitioner are still working with the respondent department. Obviously, therefore, having regard to the entire evidence on record and in view of the fact that the termination of the petitioner for want of proper notice under section 25N and no compensation in lieu of three months notice has been paid to the petitioner by the respondent at the time of his termination and obviously therefore, this issue is decided in favour of petitioner and against the respondent holding that the services of the petitioner has been retrenched w. e. f. 10-11-2001 without giving valid and legal notice is improper, illegal and unjustified.

Issue No. 2 :

15. Since I have held under issue no. 1 above, the services of petitioner have been illegally terminated by the respondent without serving proper notice under section 25N of the Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3 :

16. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this reference which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on Issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed as a result of which retrenchment notice under section 25F of the Industrial Disputes Act, 1947 issued by the respondent is hereby quashed and set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of June, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, SHIMLA.**

Ref No. 167 of 2006.
Instituted on. 1-12-2006
Decided on. 30-6-2009.

Sushil Kumar, S/o Shri Bhim Singh R/o Village Chanjaia, P.O Dwali, Tehsil Sarkaghat, District Mandi, HP.
..Petitioner.

Vs.

The Executive Engineer, HPPWD Medical College Division, Shimla-3, HP. ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri P.P Chauhan, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of services of shri Sushil Kumar S/o Shri Bhim Singh workman by the Executive Engineer, HPPWD, Medical College Division, Shimla-3, HP w.e.f. 10-11-2001 after giving retrenchment notice whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was initially engaged as a mortar mate @ Rs. 65/- per day in August, 1998 by the respondent and that after the appointment, the petitioner worked as such till 10-11-2001, who was terminated on 10-11-2001 after serving a retrenchment notice upon him under section 25F of the Industrial disputes Act, 1947 whereas the other similar situated persons were retained by the respondent, who are still continuing with the department and that the petitioner has completed 240 days preceding the date of his termination in every year and that the petitioner has unblemished service record, who never gave an opportunity to the respondent to raise any finger towards his work and conduct and that the petitioner made several requests for his reengagement as lot of work is available with the respondent but all in vain and even the respondent has engaged fresh hands as mortar mate into the employment and that the petitioner filed an OA before the Administrative Tribunal which was dismissed on the ground of jurisdiction and that the retrenchment notice was served upon the petitioner, who had not paid the compensation and the respondent has opted to retain the juniors in the office by manipulating the things and juniors to petitioner S/Shri Sandeep Kumar, Kapoor Singh and Vishal are still continuing with he respondent and that the respondent has disengaged the petitioner without assigning any rhyme or reason as the respondent gave no opportunity of hearing before termination of the services of the petitioner and that the respondent has failed to tender retrenchment compensation alongwith notice and that notice under section 25F served upon the petitioner is void ab-initio as the notice should have been made under section 25N as the department of PWD is an Industrial establishment as defined in the Act and the work is of regular nature and that the respondent is required to maintain the seniority of the workman and incase of the petitioner, the respondent has failed to discharge its duties and as such prayed for reinstatement in service alongwith all consequential benefits of back wages, seniority, continuity, regularization, promotion, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and that the retrenchment of the petitioner and others was necessitated after the completion of work. On merits, it is contended that the petitioner alongwith others was retrenched after making the compliance of mandatory provisions of section 25F of the I.D Act, 1947 as the notice was issued on 3-10-2001 indicating the reason that the petitioner had completed 240 days in each calendar year and that number of construction works which are being executed by respondent are on contract basis and some of the work has been completed which are handed over to the respective departments. It is also contended that due to completion of works and non availability of funds, the government has closed two sub divisions and merged with sub division no.II and that the services of the petitioner had to be discontinued after making the compliance of section 25F of the Act, 1947 and that the petitioner was informed to collect the compensation at any time during the office hours and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 16-11-2007 on the pleadings of the parties.

1. Whether the service of the petitioner has been retrenched *w.e.f.* 10-11-2001 after giving notice whereas the junior employees are retained? If so, its effect? ..OPP
2. If issue No.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..OPP
3. Whether the present reference is not maintainable? ..OPR
4. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes but without legal notice and without payment of compensation.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who tendered his affidavit Ex. PA averring therein that he was engaged by the respondent as mortar mate @ Rs. 65/- per day *w.e.f.* August, 1998 by the respondent, who was discharging his duties with the best of his ability and to the entire satisfaction of his superiors, who had competed more than 240 days in each calendar year and in twelve calendar months from the date of his termination, who was terminated on 10-11-2001 by giving a notice under section 25F of the Industrial Disputes Act but no retrenchment compensation was paid to him alongwith notice, who was entitled for a notice under section 25N as the respondent department is an industrial establishment and junior to him S/Shri Sandeep Kumar, Parveen Kumar, Vijay Kumar, Kapoor Singh, Vishal and Pushpa are still continuing and have been regularized by the respondent, hence prayed for reinstatement with full back wages and interest @ 18%.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Deepak Raj Chauhan, who has stated that he is posted as an Assistant Engineer with the IGMCI Sub Division, Shimla since April, 2008 and is well conversant with the facts of the case. The petitioner was engaged as mortar mate on daily wages on 11-8-1998, who continued as such till 30-9-2001 and proved the mandays chart Ex. RA. There were three Sub Divisions with Medical Division of which two were subsequently merged with Sub Division No.2 after completion of work and due to paucity of funds vide notification Ex. RB. The construction work of Medical Division were being executed by the private contractors on contract basis under the supervision of the department and on completion, the building was handed over to the concerned department and after the completion of the work, the services of the petitioner was disengaged for want of work vide notice Ex. RC alongwith one month compensation which was duly received by the petitioner but no compensation was received by the petitioner and no junior to the petitioner was engaged by the respondent.

10. The case of the petitioner is that he being the daily wages mortar mate having worked for more than 240 working days is entitled to be reinstated in service as no valid and legal notice was served upon the petitioner nor compensation was paid to him by the respondent.

11. On the contrary, the respondent contends that the petitioner was engaged against specific work and for specific period whose services have been terminated after completion of work and even retrenchment notice under section 25F was duly served upon the petitioner, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that notice under section 25F Ex. RC was sent to the petitioner but there is nothing on record which could show that it was duly served upon the petitioner. It is significant to note that no compensation in lieu of notice was paid to the petitioner by the respondent till to date. What to speak of payment of compensation to the petitioner, the respondent even did not calculate the quantum of compensation to be paid to the petitioner by the respondent and as such it is clear that no legal and valid notice was served upon the petitioner by the respondent nor compensation was paid to the petitioner at the time of his retrenchment.

14. Now, turning to the legal aspect of the case, the respondent was required to serve the petitioner with three months notice in writing as required under section 25N of the Industrial Disputes Act, 1947 having more than hundred workmen in their establishment as such mandatory notice for three months was required to be served upon the petitioner which was never served upon the petitioner by the respondent for the reasons best known to it. Moreover, Section 25N of the I.D Act, 1947 provides:

SECTION 25N : CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMAN.

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less then one year under an employer shall be retrenched by that employer until:

- (a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
- (b) the prior permission of the appropriate government or such authority as may be specified by that government by notification in the official gazette (herein after in this section referred to as the specified authority) has been obtained on an application made in this behalf.*

(2) An application for permission under sub section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under sub section (1) has been made, the appropriate government or the specified authority, after making such enquiry as it things fit and after giving the reasonable opportunity of being heard to the employer, the workman concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of reason stated by the employer, the interest of the workman and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workman.

Here, I am fortified with a view taken by the Hon'ble Supreme Court incase titled as Uttranchal Forests Development Corporation & Anr Vs. Jabar Singh & Ors. as reported in 2007-II-LLJ 95 in which it was held that :

“Retrenchment notice in question not complying with two conditions of section 25-N namely giving three months notice to workmen in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages”

In the instant case, the respondent has not complied with the mandatory provisions of section 25N of the Industrial Disputes Act, 1947 nor paid the compensation to the petitioner at the time of his termination from service and as such the termination of the petitioner w. e. f. 10-11-2001 is held illegal, improper and unjustified. Moreover, the petitioner could not prove on record that his juniors are still continuing with the respondent department especially when the two medical sub divisions of HPPWD have been merged with division no. II nor the record has been summoned from the office of the respondent to prove that the juniors to petitioner are still working with the respondent department. Therefore, having regard to the entire evidence on record and in view of the fact that the termination of the petitioner for want of proper notice under section 25N and no compensation in lieu of three months notice has been paid to the petitioner by the respondent at the time of his termination and obviously therefore, this issue is decided in favour of petitioner and against the respondent holding that the services of the petitioner has been retrenched w. e. f. 10-11-2001 without giving valid and legal notice is improper, illegal and unjustified.

Issue No. 2:

15. Since I have held under issue No. 1 above, the services of petitioner have been illegally terminated by the respondent without serving proper notice under section 25N of the Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully

employed after his termination. Accordingly, issue No.2 is decided in favour of the petitioner and against the respondent.

Issue No. 3:

16. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this reference which is perfectly maintainable in the present form. Accordingly, issue No. 3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on Issue No. 1 to 3, the claim of the petitioner succeeds and is hereby allowed as a result of which retrenchment notice under section 25F of the Industrial Disputes Act, 1947 issued by the respondent is hereby quashed and set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of June, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA.

Ref No. 6 of 2007
Instituted on. 19- 2-2007
Decided on. 30-6-2009

Baldev Singh S/o Shri Param Dev R/o Village Bhoor Jhangi, Tehsil Sarkaghat, District Mandi, HP.

..Petitioner.

Vs.

The Executive Engineer, HPPWD Medical College Division, Shimla-3, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri P.P Chauhan, Ld. Csl.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this court for adjudication :

“Whether the termination of services of Shri Baldev Singh S/o Shri Param Dev workman by the Executive Engineer, HPPWD, Medical College Division, Shimla-3, HP w. e. f. 10-11-2001 after giving retrenchment notice whereas junior to him are retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”

2. The petitioner has filed a statement of claim asserting therein that he was initially engaged as a mortar mate @ Rs. 65/- per day in September, 1998 by the respondent and that after the appointment, the petitioner worked as such till 10-11-2001, who was terminated on 10-11-2001 after serving a retrenchment notice upon him under section 25F of the Industrial disputes Act, 1947 whereas the other similar situated persons were retained by the respondent, who are still continuing with the department and that the petitioner has completed 240 days preceding the date of his termination in every year and that the petitioner has unblemished service record, who never gave an opportunity to the

respondent to raise any finger towards his work and conduct and that the petitioner made several requests for his reengagement as lot of work is available with the respondent but all in vain and even the respondent has engaged fresh hands as mortar mate into the employment and that the petitioner filed an OA before the Administrative Tribunal which was dismissed on the ground of jurisdiction and that the retrenchment notice was served upon the petitioner, who had not paid the compensation and the respondent has opted to retain the juniors in the office by manipulating the things and juniors to petitioner S/Shri Sandeep Kumar, Kapoor Singh and Vishal are still continuing with the respondent and that the respondent has disengaged the petitioner without assigning any rhyme or reason as the respondent gave no opportunity of hearing before termination of the services of the petitioner and that the respondent has failed to tender retrenchment compensation alongwith notice and that notice under section 25F served upon the petitioner is void ab-initio as the notice should have been made under section 25N as the department of PWD is an Industrial establishment as defined in the Act and the work is of regular nature and that the respondent is required to maintain the seniority of the workman and incase of the petitioner, the respondent has failed to discharge its duties and as such prayed for reinstatement in service alongwith all consequential benefits of back wages, seniority, continuity, regularization, promotion, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and that the retrenchment of the petitioner and others was necessitated after the completion of work. On merits, it is contended that the petitioner alongwith others was retrenched after making the compliance of mandatory provisions of section 25F of the I.D Act, 1947 as the notice was issued on 3-10-2001 indicating the reason that the petitioner had completed 240 days in each calendar year and that number of construction works which are being executed by respondent are on contract basis and some of the work has been completed which are handed over to the respective departments. It is also contended that due to completion of works and non availability of funds, the government has closed two sub divisions and merged with sub division no. II and that the services of the petitioner had to be discontinued after making the compliance of section 25F of the Act, 1947 and that the petitioner was informed to collect the compensation at any time during the office hours and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this court on 16-11-2007 on the pleadings of the parties.

1. Whether the service of the petitioner has been retrenched *w. e. f.* 10-11-2001 after giving notice whereas the junior employees are retained? If so, its effect? ..OPP
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..OPP
3. Whether the present reference is not maintainable? ..OPR
4. Relief.

6. I have heard the Ld. Counsel for the petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes but without legal notice and without payment of compensation.
Issue No. 2	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No. 1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who tendered his affidavit Ex. PA averring therein that he was engaged by the respondent as mortar mate @ Rs. 65/- per day *w.e.f.* September, 1998 by the respondent, who was discharging his duties with the best of his ability and to the entire satisfaction of his superiors, who had competed more than 240 days in each calendar year and in twelve calendar months from the date of his termination, who was terminated on 10-11-2001 by giving a notice under section 25F of the Industrial Disputes Act but no retrenchment compensation was paid to him alongwith notice, who was entitled for a notice under section 25N as

the respondent department is an industrial establishment and junior to him S/Shri Sandeep Kumar, Parveen Kumar, Vijay Kumar, Kapoor Singh, Vishal and Pushpa are still continuing and have been regularized by the respondent, hence prayed for reinstatement with full back wages and interest @ 18%.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Deepak Raj Chauhan, who has stated that he is posted as an Assistant Engineer with the IGMC Sub Division, Shimla since April, 2008 and is well conversant with the facts of the case. The petitioner was engaged as mortar mate on daily wages on 5-9-1998, who continued as such till 30-9-2001 and proved the mandays chart Ex. RA. There were three Sub Divisions with Medical Division of which two were subsequently merged with Sub Division no.2 after completion of work and due to paucity of funds vide notification Ex. RB. The construction work of Medical Division were being executed by the private contractors on contract basis under the supervision of the department and on completion, the building was handed over to the concerned department and after the completion of the work, the services of the petitioner was disengaged for want of work vide notice Ex. RC alongwith one month compensation which was duly received by the petitioner but no compensation was received by the petitioner and no junior to the petitioner was engaged by the respondent.

10. The case of the petitioner is that he being the daily wages mortar mate having worked for more than 240 working days is entitled to be reinstated in service as no valid and legal notice was served upon the petitioner nor compensation was paid to him by the respondent.

11. On the contrary, the respondent contends that the petitioner was engaged against specific work and for specific period whose services have been terminated after completion of work and even retrenchment notice under section 25F was duly served upon the petitioner, hence the petitioner is not entitled to any relief as prayed by him.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that notice under section 25F Ex. RC was sent to the petitioner but there is nothing on record which could show that it was duly served upon the petitioner. It is significant to note that no compensation in lieu of notice was paid to the petitioner by the respondent till to date. What to speak of payment of compensation to the petitioner, the respondent even did not calculate the quantum of compensation to be paid to the petitioner by the respondent and as such it is clear that no legal and valid notice was served upon the petitioner by the respondent nor compensation was paid to the petitioner at the time of his retrenchment.

14. Now, turning to the legal aspect of the case, the respondent was required to serve the petitioner with three months notice in writing as required under section 25N of the Industrial Disputes Act, 1947 having more than hundred workmen in their establishment as such mandatory notice for three months was required to be served upon the petitioner which was never served upon the petitioner by the respondent for the reasons best known to it. Moreover, Section 25N of the I.D Act, 1947 provides:

SECTION 25N : CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMAN.

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until:

- (a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and*
- (b) the prior permission of the appropriate government or such authority as may be specified by that government by notification in the official gazette (herein after in this section referred to as the specified authority) has been obtained on an application made in this behalf.*

(2) An application for permission under sub section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workman concerned in the prescribed manner.

(3) Where an application for permission under sub section (1) has been made, the appropriate government or the specified authority, after making such enquiry as it things fit and after giving the reasonable opportunity of being heard to the employer, the workman concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of reason stated by the employer, the interest of the workman and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workman.

Here, I am fortified with a view taken by the Hon'ble Supreme Court incase titled as Uttranchal Forests Development Corporation & Anr Vs. Jabar Singh & Ors. as reported in 2007-II-LLJ 95 in which it was held that :

“Retrenchment notice in question not complying with two conditions of section 25-N namely giving three months notice to workmen in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages”

In the instant case, the respondent has not complied with the mandatory provisions of section 25N of the Industrial Disputes Act, 1947 nor paid the compensation to the petitioner at the time of his termination from service and as such the termination of the petitioner w. e. f. 10-11-2001 is held illegal, improper and unjustified. Moreover, the petitioner could not prove on record that his juniors are still continuing with the respondent department especially when the two medical sub divisions of HPPWD have been merged with division no. II nor the record has been summoned from the office of the respondent to prove that the juniors to petitioner are still working with the respondent department. Therefore, having regard to the entire evidence on record and in view of the fact that the termination of the petitioner for want of proper notice under section 25N and no compensation in lieu of three months notice has been paid to the petitioner by the respondent at the time of his termination and obviously therefore, this issue is decided in favour of petitioner and against the respondent holding that the services of the petitioner has been retrenched w. e. f. 10-11-2001 without giving valid and legal notice is improper, illegal and unjustified.

Issue No. 2:

15. Since I have held under issue No. 1 above, the services of petitioner have been illegally terminated by the respondent without serving proper notice under section 25N of the Industrial Disputes Act, 1947, hence the petitioner is held entitled to his reinstatement in service alongwith seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue No. 2 is decided in favour of the petitioner and against the respondent.

Issue No. 3:

16. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this reference which is perfectly maintainable in the present form. Accordingly, issue No. 3 is decided in favour of the petitioner and against the respondent.

RELIEF

As a sequel to my above discussion and findings on Issue No.1 to 3, the claim of the petitioner succeeds and is hereby allowed as a result of which retrenchment notice under section 25F of the Industrial Disputes Act, 1947 issued by the respondent is hereby quashed and set aside and the petitioner is ordered to be reinstated in service with seniority and continuity but without back wages as the petitioner has not placed any material on record to substantiate that he was not gainfully employed after his termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of June, 2009 in the presence of parties.

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA CAMP COURT AT NAHAN

Ref No. 137 of 2007
Instituted On. 1-11-2007
Decided on. 25-6-2009

1. Kishan Singh S/o Shri Devi Ram, R/o Village Talon, P.O & Tehsil Nahan, District Sirmour, HP.
2. Sohan Lal S/o Shri Taru Ram R/o Moh. Amarpur, Nahan , District Sirmour, HP.
3. Naranjan Singh, S/o Shri Bishna Ram R/o Moh. Amarpur, Nahan , District Sirmour, HP. ..Petitioners.

Vs.

The Executive Engineer, (Mech.)HPPWD & IPH State Workshop, (Nahan Foundry) Nahan, District Sirmour, HP. ..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioners : Shri A.K Gupta, Ld. Csl.
For respondent : Shri Sanjay Pandit, Ld. ADA.

AWARD

1. The following reference has been received by this court from appropriate government for adjudication:-

"Whether demand raised vide demand notices dated 15.6.2005 (copies enclosed) by S/Shri Kishan Singh, Sohan Lal and Niranjn Singh workmen before the Executive Engineer (Mech.) HPPWD & IPH State Workshop, (Nahan Foundry) Nahan District Sirmour, HP is legal and justified? If yes, to what service benefits and relief the above aggrieved workmen are entitled from the above employer? If not, what its legal effects?"

2. The petitioners have filed a claim asserting therein that they were serving as drivers in the erstwhile Nahan foundry Ltd. and their services were taken over by the HPPWD & IPH Departments w. e. f. 1-10-1988, hence they became the employees of the government of Himachal Pradesh and that as per the Fundamental Rule 56-B, the skilled and semi skilled workmen who are working as artisan in an industrial establishment would be retired at the age of sixty years and the petitioners are skilled workers and they are performing the duties of artisans and as per the F.R 56-B, the petitioners were to be retired at the age of sixty years but the petitioners have been retired at the age of 58 years. The petitioner no. 1 was retired on 31-8-1996, the petitioner no.2 was retired on 31.8.1997 and the petitioner no.3 was retired on 21-3-2002. The orders of the retirement of the petitioners are illegal, unjustified, arbitrary and against the law and also in violation of the rules and that a large number of workmen approached this Court against their retirement at the age of 58 years which were set aside and granted them the benefits by this Court in view of the Rule 56-B of the Fundamental Rules and as such prayed that the retirement age of the petitioners at the age of 58 years be set aside and they be allowed to continue in service at the age of sixty years, the benefits of two years also be granted alongwith all other retiral benefits be ordered to be paid, hence this claim.

3. The respondent resisted and contested the claim of the petitioners and filed reply interalia raising preliminary objections that the petitioners have filed the claim on the analogy of the order passed by the Supreme Court in SLP titled as Mohan Lal Driver Vs. State of Himachal Pradesh and that as per the FR 56 (a) every government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years and the petitioners being drivers fall in the class III for the purpose of FR 56 (a) and that Kishan Singh was initially appointed as knocker on 1-11-1961 by the Management of Nahan Foundry Ltd. Nahan whose grade was revised on 1-1-1973 to Rs. 196-232/-, who was promoted as driver in the pay scale of Rs. 260-400 on 19-3-1976 and on 1-10-1988, Nahan Foundry Ltd. was converted into HPPWD & IPH workshop and the services of all the employees including the petitioners were taken over by the Himachal Pradesh Government under the prescribed terms and conditions and that Shri Kishan Singh petitioner vide his application had requested to enhance his retirement age of superannuation from 58 to 60 years which was rejected and that Niranjn Singh was appointed as guard on 11-5-1959 by the management of Nahan Foundry Ltd., who was transferred to electric motor shop vide office order dated 5-7-1974 in the category of unskilled worker, who was selected for the post of cleaner, who was promoted as driver vide office order dated 17-10-1987 whose services were taken over by the HPPWD & IPH workshop Nahan on 1-10-1988 and that Sohan Lal was initially appointed as canteen boy on 1-8-1959, who was promoted as driver vide office order dated 15-12-1972 whose services were also taken over by the HPPWD and IPH state workshop Nahan on 1-10-1988, who was retired on 31-3-2002. On merits, it is contended that the Nahan Foundry Ltd. was converted into HPPWD & IPH State Workshop Nahan on 1-10-1988 and all the employees accepted the retirement orders and retiral benefits, hence the claim is barred by limitation and that the petitioners were retired from the service after attaining the age of superannuation of 58 years as per rules, hence the claim of retiral benefits of 60 years is not legally maintainable and the provisions of FR 56 (b) is not applicable in the case of the petitioners as the petitioners fall under FR 56 (a) as the petitioners are class III employees and that Mohan Lal Driver had agitated the case of his retirement age raising from 58 years to 60 year before this Court which was allowed by this Court and that the petitioners were rightly retired at the age of 58 years and as such the petitioners are not entitled for further two years benefits of service, hence prayed for the dismissal of the claim petition.

4. No rejoinder filed. The followings issues were framed by this Court on 26-11-2008 on the pleadings of the parties.

1. Whether the demand raised vide demand notice dated 15-6-2005 by S/Shri Kishan Singh, Sohan Lal and Niranjn Singh workmen before the Executive Engineer (Mech.) HPPWD & IPH State Workshop (Nahan Foundry), Nahan, District Sirmour, HP is legal and justified as alleged? ..OPP

2. If issue No.1 is proved, to what relief the petitioners are entitled to? ..OPP
3. Whether the petition is not maintainable in the present form ? ..OPR
4. Relief.

5. I have heard the Learned Counsel for the petitioner and Ld. ADA for respondent and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1	Yes.
Issue No. 2	Petitioners are entitled to two years benefits with all retiral benefits.
Issue No. 3	No.
Relief.	Reference answered in affirmative per operative part of the award.

REASONS FOR FINDINGS

Issue No. 1:

7. In order to prove this issue, the petitioners have examined PW-1 Shri Kishan Singh, who has stated that they worked as drivers alongwith other petitioner with PWD & IPH workshop, Nahan, who retired from service in August, 1996 at the age of 58 years and the other petitioners were also retired at the age of 58 years whereas they should have been retired at the age of 60 years as per fundamental Rule 56 (b) and as such they be granted two years service benefits in the interest of justice and that incase of Mohan Lal, who was driver with this establishment also retired at the age of 58 years, who approached the Labour Court and won the case and got the service benefits of two years which was challenged by Nahan Foundry upto Supreme Court and the order of the Labour Court was affirmed.

8. To rebut the case of the petitioners, the respondent examined RW-1 Shri A.K Nanda, Supdt. In HPPWD & IPH Workshop (Nahan foundry) has stated that the petitioners S/Shri Kishan Singh, Sohan Lal and Niranjana Singh were retired at the age of 58 years, who claim to be retired at the age of sixty years and all these petitioners were posted as drivers with the respondent when they retired. The petitioners were class III employees and as such they were rightly retired at the age of 58 years under the Fundamental Rules. The petitioner no.1 made a representation to the department which was rejected by the department vide Ex. RA and the terms and conditions of taking over of Nahan Foundry is Ex. RB. The retirement orders of the petitioner Kishan Singh is Ex. RC, retirement orders of Niranjana Singh is Ex. RD and the retirement orders of Sohan Lal is Ex. RE, the decision of the State government is Ex. RF, another order of the State government is Ex. RG and the copy of fundamental rules is Ex. RH and as such the case of the petitioners is not justified.

9. The case of the petitioners is that they being the drivers with the respondent, retired at the age of 58 years, who should have been retired at the age of 60 years under fundamental rules 56 (b) and as such they are entitled to be given the service benefits of two years.

10. On the contrary, the respondent contends that the petitioners were rightly retired at the age of 58 years.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it is clear that the respondent department has clearly admitted that the petitioners retired at the age of 58 years. They have further admitted that since the Nahan Foundry Ltd. Nahan was taken over by the HPPWD & IPH Workshop Nahan on 1-10-1988, hence the petitioners have become their employees from this date. Now, it is clear to conclude that once the petitioners became the employees of respondent department w. e. f. 1-10-1988, they shall be governed by the CCS (CCA) Rules and Fundamental Rules and service Rules qua continuance of their employment or the service till the superannuation. Undoubtedly, the workmen petitioners were legally required to be retired or superannuated in accordance with the said Rules. That being so, FR 56 (b) directly comes into play qua the fixation of the pay, date of year of the retirement of the workmen petitioners. This Rule reads as under:

“(b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.”

NOTE.—In this clause, a workman means a highly skilled, skilled, semi skilled or unskilled artisan employed on monthly rate of pay in an industrial or work charged establishment.”

On the other hand, the respondent had nothing to rebut that the petitioners were not the workmen. Moreover, it is well settled incase titled as Prithipal Singh Vs. Union of India as reported in AIR 1991 SC 915 in which it was held that :

“the driver serving under the ministry of Surface Transport was held to be a workman.”

However, it again stood admitted overtly that all of them were workmen till the date they were erroneously made to retire at the age of 58 years. This rule cast an imperative mandate on the respondent department to superannuate every workman whether skilled, semi skilled or unskilled only after attaining the age of sixty years. It is here that the respondent department willy-nilly chose to offer affront to the provisions of this Rule. It may also be noticable here that the respondent department is an industrial establishment. Before the merger of Nahan Foundry Ltd. into it, the former was also an industrial establishment and therefore the petitioners were workmen of an industrial establishment before and after 1-10-1988. The status and character of their employment remained unaltered. So was theirs also. By these observations what is deducible is that the application of FR 56 (b) is attracted to the fixation of the retirement age of the workmen petitioners. It is borne out from the record that the respondent department proceeded illegally and erroneously to superannuate the petitioners in this case instead of attaining the age of sixty years being workman and obviously therefore, the said retirement of the workmen petitioners by office order or notification is held to be violative of FR 56 (b). That being so, the superannuation or retirement so imposed on them becomes nonest or a nullity without any lawful consequences. Accordingly, this issue is decided in favour of the petitioners and against the respondent holding that that the demand raised by the petitioners before the Executive Engineer (Mech.) HPPWD & IPH workshop Nahan, is legal and justified.

Issue No. 2 :

13. Since I have held under issue no. 1 that the demand raised by the petitioners before the Executive Engineer, (Mech.) HPPWD & IPH Workshop Nahan is legal and justified and since all the petitioners have crossed the age of 60 years, hence they are entitled to be given the benefits of the entire salaries at the relevant time coupled with all the admissible collateral benefits which were last drawn by them at the age of 58 years for further two years till the age of sixty years. Accordingly, issue no.2 is decided in favour of the petitioners and against the respondents.

Issue No. 3:

14. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly the issue is decided in favour of petitioners and against the respondent.

RELIEF

As a sequel to my above discussion and findings on issue No.1 to 3 above, the claim of the petitioners succeeds and is hereby allowed and since all the petitioners have crossed the age of 60 years, hence the respondent department is also commanded to pay the wages or salaries of workers coupled with all the admissible collateral benefits which were last drawn by each of the workman petitioners at the age of 58 years for further two years and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this Day of 25th June, 2008 in presence of parties counsels .

By order,
JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

हिमाचल प्रदेश विद्युत विनियामक आयोग, शिमला

अधिसूचना

शिमला-171002, दिनांक 24 अगस्त, 2009

संख्या एच0पी0ई0आर0सी0/सचिव/151.—साधारण खण्ड अधिनियम, 1897 (1897 का 10) की धारा 21 के साथ पठित विद्युत अधिनियम, 2003 (2003 का 36) की धारा 181 की उप-धारा (2) के खण्ड (य ठ) तथा धारा 92 की उप-धारा (1) द्वारा प्रदत्त शक्तियों तथा इस निमित्त सशक्त करने वाली अन्य सभी शक्तियों का प्रयोग करते हुए, हिमाचल प्रदेश विद्युत विनियामक आयोग, राजपत्र, हिमाचल प्रदेश (असाधारण)

के 14 जनवरी, 2005, के अंक में प्रकाशित हिमाचल प्रदेश विद्युत विनियामक आयोग (कारबार संचालन) विनियम, 2005 में और संशोधन करने हेतु, निम्नलिखित प्रारूप विनियम, बनाने का प्रस्ताव करता है, और उन्हें एतद्वारा उक्त अधिनियम की धारा 181 की उप-धारा (3) तथा विद्युत (पूर्व प्रकाशन के लिए प्रक्रिया) नियम, 2005 द्वारा यथोपेक्षित के अनुसार उनसे आम प्रभावित होने वाले व्यक्तियों की सूचना के लिये प्रकाशित किया जाता है और एतद्वारा यह नोटिस (सूचना) दिया जाता है कि उक्त प्रारूप विनियमों पर, इनके राजपत्र, हिमाचल प्रदेश, में प्रकाशित होने की तारीख से तीस (30) दिन के अवसान पर, किसी भी आक्षेप या सुझाव सहित, जो इस बावत उक्त अवधि के भीतर प्राप्त हुआ हो/हुए हों, विचार किया जाएगा ।

इस निमित्त आक्षेप या सुझाव सचिव, हिमाचल प्रदेश, विद्युत विनियामक आयोग, क्यॉथल कमर्शियल काम्पलेक्स, खलिनी, शिमला को सम्बोधित किए जाने चाहिए ।

प्रारूप विनियम

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन विनियमों का संक्षिप्त नाम हिमाचल प्रदेश विद्युत विनियामक आयोग (कारबार संचालन) (छठा संशोधन) विनियम, 2009 है ।

(2) ये विनियम राजपत्र, हिमाचल प्रदेश, में इनके प्रकाशन की तारीख से लागू होंगे ।

2. विनियम 5 का संशोधन.—हिमाचल प्रदेश विद्युत विनियामक आयोग (कारबार संचालन) विनियम, 2005 के विनियम 5 में —

(क) उप-विनियम (4) में—

- (i) “TRUTH TRIUMPHS” शब्दों, के स्थान पर देवनागरी में शब्द “हि0 प्र0 विद्युत विनियामक आयोग, प्रतिस्थापित किए जायेंगे ;
- (ii) आयोग के विद्यान संप्रतीक के स्थान पर निम्नवत संप्रतीक प्रतिस्थापित किया जाएगा, नामतः—



(ख) उप-विनियम (5) में, अध्यक्ष अथवा सदस्यों की स्टाफ कार पर संप्रदर्शित की जाने वाली झंडी में आयोग के विद्यान संप्रतीक के स्थान पर निम्नवत संप्रतीक प्रतिस्थापित किया जाएगा नामतः —





MEMBER

आयोग के आदेशानुसार,
हस्ताक्षरित /—
सचिव,
हिमाचल प्रदेश विद्युत विनियामक आयोग।

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

NOTIFICATION

Shimla, the 24th August, 2009

No. HPERC/Secy/151.—In exercise of the powers conferred by sub section (1) of section 92 and clause (zl) of sub-section (2) of section 181 of the Electricity Act, 2003 (36 of 2003), read with section 21 of the General Clauses Act, 1897 (10 of 1897), and all other powers enabling it in this behalf, the Himachal Pradesh Electricity Regulatory Commission proposes to make the following draft regulations further to amend the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, published in the Rajpatra, Himachal Pradesh (Extraordinary), dated 14th January, 2005, and as required by sub-section (3) of section 181 of the said Act and the Electricity (Procedure for Previous Publication) Rules, 2005, are hereby published for the information of all the persons likely to be affected thereby; and notice is hereby given that the said draft regulations will be taken into consideration after the expiry of thirty days from the date of their publication in the Rajpatra, Himachal Pradesh, together with any objections or suggestions which may within the aforesaid period be received in respect thereto.

The objections or suggestions in this behalf should be addressed to the Secretary, Himachal Pradesh Electricity Regulatory Commission, Keonthal Commercial Complex, Khalini, Shimla-171002.

DRAFT REGULATIONS

1. Short title and commencement.—(1) These regulations may be called the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) (Sixth Amendment) Regulations, 2009.

(2) These regulations shall come into force from the date of their publication in the Rajpatra, Himachal Pradesh.

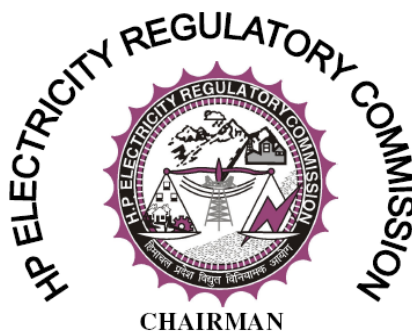
2. Amendment of Regulation 5.— In regulation 5 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005,

(a) In sub-regulation (4) —

- (i) for the words “TRUTH TRIUMPHS”, the words in devnagri script "हि० प्र० विद्युत विनियामक आयोग" shall be substituted; and
- (ii) for the existing emblem of the Commission, the following emblem shall be substituted, namely :—



- (b) in sub-regulation (5), for the existing emblem appearing in flags to be displayed on the mount of staff car of the Chairperson and of the Members, the following emblem shall be substituted, namely :—





MEMBER

By the order of the Commission,
Sd/-
Secretary.